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FREEDOM OF THE PRESS

—AND—

“OBSCENE” LITERATURE.

THREE ESSAYS

BY

THEODORE SCHROEDER,

63 EAST FIFTY-NINTH STREET, NEW YORK CITY.

OF THE NEW YORK BAR.

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*“There is tonic in the things that men do not wish to hear.”*—  
HENRY WARD BEECHER.

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THE FREE SPEECH LEAGUE,

40 LEXINGTON AVENUE,

NEW YORK CITY.

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## ANNOUNCEMENT.

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The late Dr. Edward Bliss Foote deposited, with his last will and testament, a letter which contained the following paragraph:

"To my sons, or, in case of their demise, to their successors, I would say that my wishes would be that they give generously from the proceeds of my estate to all good movements for the maintenance of free press, free speech and free mails, the cause of heredity (i. e., stirpiculture, eugenics), liberalism, etc., which movements have as yet no sufficient legal organization to permit them to receive legacies. All projects that have for their object the improvement of the human family have ever enlisted my sympathies and my support, and my successors cannot better carry out my wishes than to give liberally to them."

Because of that request, and of his own devotion to the cause of freedom of speech, Dr. E. B. Foote, Jr., has furnished the money to print this pamphlet and gratuitously to circulate a large number of them in official circles. It is intended also to incorporate the Free Speech League, so that hereafter bequests may be made to further the ends of all friends of free inquiry.

Mr. Schroeder is preparing other arguments attacking the validity of various laws which now abridge the freedom of speech and press. which other essays we also desire to publish. A Free Press Anthology is also in preparation, and should be given a wide circulation.

To that end, as well as the wider dissemination of these essays we invite contributions from all lovers of intellectual hospitality. Remittances should be sent to Dr. E. B. Foote, Jr., Treasurer, 120 Lexington Avenue, New York City,

Ever for Truth, Justice and Liberty,

THE FREE SPEECH LEAGUE,

E. W. CHAMBERLAIN, *Pres.*

10 W. 61st Street, N. Y. City.

THE FOLLOWING REPORT OF  
**COMMITTEE ON LAWS OF OBSCENITY,**  
WAS UNANIMOUSLY ADOPTED BY THE  
**NATIONAL PURITY FEDERATION,**  
**October 11, 1906.**

Your committee appointed to secure for Purity workers that liberty of press and speech essential to the Purity Propaganda would report as follows:—

We desire to express our hearty and unqualified endorsement of the purpose for which the laws for the suppression of vice and the punishment of those who send obscene literature through the United States mails, were originally framed; we wish also to express our earnest desire for even a larger exercise of these laws in the accomplishment of the original purpose, which must have been in the minds of those who framed and enacted these laws.

In view, however, of the fact that Purity workers are constantly placed in jeopardy because of the uncertainty of the judicial test of obscenity and because these laws have in some instances been made the means of injustice and cruel wrong; and in view of the fact also that the indefinite character of the law renders it impossible for anyone to know whether he is acting within the law or is violating the law, and because the law has been made a menace and a hindrance to many earnest workers whose efficient help is most seriously needed, your Committee would therefore make the following recommendations:

Resolved, That the President be empowered to appoint a permanent committee of seven of whom he shall be one, who shall seek to secure such changes in the judicial tests of obscenity as will make the law so certain that by reading it anyone may know what constitutes its violation and to secure such an interpretation of the law as will make impossible the suppression of any scientific and educational Purity literature.

We would also recommend that this Committee be authorized to co-operate with organizations, individuals and courts, in affording any help in their power to apprehend, convict and punish the disseminators of literature truly obscene and of perverters of youth; it shall, however, at the same time be the duty of this Committee to seek to afford the defense and protection so much needed by earnest and sincere Purity workers who are now constantly exposed to the dangers of prosecution by the uncertainty of the very laws which they desire to cherish and obey.

We would therefore recommend that this Committee be authorized to afford to any real Purity worker who is unjustly arrested such sympathy and assistance, legal, financial and moral, as may be within their power.

We would also recommend that this Committee should seek to enlist the co-operation of other organizations in furthering these same ends.

This Committee shall also be empowered to make any propaganda necessary through the public press or otherwise in securing such punishment of the guilty and such protection for the innocent as in their judgment may be most wise and discreet.

SYLVANUS STALL, D.D.

THEODORE SCHROEDER,

Mrs. SARAH F. BOND,

Mr. J. B. CALDWELL,

Mrs. ROSE WOOD-ALLEN CHAPMAN,

Dr. HATTIE A. SCHWENDENER,

Dr. DELOS F. WILCOX.

*Republished from THE LIGHT.*

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MORE LIBERTY OF PRESS ESSENTIAL  
TO MORAL PROGRESS.

BY THEODORE SCHROEDER,

(This Address was prepared for a conference of the National Purity Federation held in Chicago, October 9-12, 1906, now somewhat enlarged and revised.)

Only a few decades ago, the mighty governed the many, through cunning, strategy, and compulsory ignorance. A lay citizen was punished by law, if he presumed critically to discuss politics, officials, slave emancipation, astronomy, geology, or religion. To teach our African slaves to read, or to circulate abolitionist literature, was in some States a crime, because such intelligence conduced to an "immoral tendency" toward insurrection. To have the Bible in one's possession has also been prohibited by law, because of the "immoral tendency" toward private judgments, which general reading of it might induce.

One by one the advocates of mystery and blind force have surrendered to the angels of enlightenment, and every enlargement of opportunity for knowledge has been followed by the moral elevation of humanity. Only in one field of thought do we still habitually assume that ignorance is a virtue, and enlightenment a crime. Only upon the subject of sex do we by statute declare that artificial fear is a safer guide than intelligent self-reliance, that purity can thrive only in concealment and ignorance, and that to know all of oneself is dangerous and immoral. Here only are we afraid to allow truth to be contrasted with error. The issue is, shall we continue thus to fear full and free discussion of sex facts and sex problems?

## WHY NOT IGNORE SEX?

The first question to be answered is, why discuss the subject of sex at all? There are those who advise us to ignore it entirely, upon the theory that the natural impulse is a sufficient guide. To this it may be answered that all our sex activities cannot be subjected to the constant and immediate control of the will. We cannot ignore sex by merely willing to do so. Our attention is unavoidably forced upon the subject, both by conditions within and without ourselves. That we may deceive ourselves in this particular is possible; that we all can and many do lie about it is certain.

Without sexual education, we cannot know whether we are acting under a healthy or a diseased impulse. It is known to the psychologist that many are guilty of vicious and injurious sexual practices, without being in the least conscious of the significance of what they are doing. Everywhere we see human wrecks because of a failure to understand their impulses, or to impose intelligent restraints upon them. Many become sexually impotent, hyperaesthetic, or perverted by gradual processes the meaning of which they do not understand, and whose baneful consequences intelligence would enable them to foresee, and easily avoid. Since individuals will not go to a physician until the injury is accomplished and apparent, it follows that there is no possible preventive except general intelligence upon the subject. At present the spread of that knowledge is impeded by laws and by a prurient prudery, which together are responsible for the sentimental taboo which attaches to the whole subject. The educated man of to-day measures our different degrees of human progress by the quantity of intelligence which is used in regulating our bodily functioning. No reason exists for making sex an exception.

### THE PHYSICAL FOUNDATION FOR MORAL HEALTH.

To those who accept a scientific ethics, moral health is measured by the relative degree to which their conduct achieves physical and mental health for the race. To the religious moralist, who has other ends in view, pathologic sexuality is probably the greatest impediment to the practical realization of his ideal of sexual morality. Everywhere we see that disease is the greatest obstacle to moral health. From either point of view, it follows that one of the most important considerations in all purity propaganda must be the diffusion

of such knowledge as will best conduce to the highest physical and mental perfection.

I will ask your indulgence for a few general observations, after which I will proceed to a more detailed discussion of our legislative preventives to sexual intelligence and moral health.

#### ON THE RIGHT TO KNOW.

All life is an adjustment of constitution to environment. The seed dies, or has a stunted or thrifty growth, according to the degree of harmonious relationship it effects with soil, moisture and sunlight. So it is with man: He lives a long, happy and useful life, just to the degree that his own organism functions in accord with natural law operating under the best conditions. It follows that a growing perfection in the knowledge of those laws is essential to a progressive harmony in the individual's conscious adjustment to his physical and social environment, and every one of us has the same right as every other to know all that is to be known upon the subject of sex, even though that other is a physician.

Since a comparative fullness of life depends upon the relative perfection of the individual's adjustment to the natural order, and since the greatest knowledge of nature's rule of life is essential to the most perfect conscious adjustment (which is the most perfect life), it follows that our equality of right to life, liberty, and the pursuit of happiness entitles every sane adult person to know for himself, to the limit of his desire and understanding, all that can be known of nature's processes, not excluding sex.

Every sane adult person, if he or she desires it, is equally entitled to a judgment of his or her own as to what is the natural law of sex as applied to self, and to that end is personally entitled to all the evidence that any might be willing to submit if permitted. It is only when all shall have access to all the evidence and each shall have thus acquired intelligent reasoned opinions about the physiology, psychology, hygiene, and ethics of sex, that we can hope for a wise social judgment upon the problems which these present. The greatest freedom of discussion is therefore essential as a condition for the improvement of our knowledge of what is nature's moral law of sex, and is indispensable to the preservation of our right to know.

#### LEGAL ABRIDGEMENT OF THE RIGHT TO KNOW.

This brings us to inquire what are the legal abridgements of our right to know? Both our Federal and State laws establish a so-called "moral" censorship of literature. All the statutes in question describe what is prohibited only by such epithets as, *lewd, indecent, obscene, lascivious, disgusting, or shocking*. At the time of the enactment of these laws, the scientific study of psychology had hardly been commenced, and the existence of a sexual psychology was not yet suspected. Consequently it was ignorantly and erroneously assumed that the prohibited qualities were those of the book or picture, and therefore of definitely describable characteristics. One needs only to analyze the judicial tests of obscenity to discover how impossible and absurd it is to attempt to define the prohibited qualities in terms of a book or picture. Modern sexual psychology now seems to prove that the words in question only symbolize an emotional association in the viewing mind, and not at all a quality inherent in the printed page. Thus science and the Bible are in harmony in declaring that "Unto the pure all things are pure," notwithstanding the judicial slurs which judges, ignorant of psychology, have cast upon that text. (See *Albany Law Journal*, July, 1906, for fuller discussion.)

This judicial error brought strange consequences. The courts were unable to frame a definition of the obscene in terms of a book, and so were compelled to indulge in speculative vagaries. Judges now practically authorize juries to declare anything indecent and obscene, or not, as whim, caprice, prejudice, or personal malice might persuade them that the book or picture tended to induce immoral or libidinous thoughts in the minds of any sexually hyperaesthetic person open to such immoral influences and into whose hands it *might* come. No standard for measuring psychologic tendencies, nor mode of reconciling conflicting codes of ethics, was attempted, nor could be furnished. It was stupidly assumed, in contradiction to the fact, that everybody was in agreement as to what is the higher morality.

#### THE CASE OF HICKLIN.

The first reported English decision (*Reg. vs. Hicklin*, L. R. 3 Q. B. 360), which attempted to state a test of obscenity, was decided in 1868, and furnished the precedent for practically all American decisions. The facts were as follows: Hicklin, the accused, had sold a pamphlet entitled "The Confessional Un-

masked: Showing the Depravity of the Romish Priesthood, the Iniquity of the Confessional, and the Questions put to Females in Confession." The pamphlet consisted of extracts from Catholic theologians, one page giving the exact original Latin quotations and the adjoining page furnishing a correct translation thereof. Much of the pamphlet admittedly was not at all obscene. It was not sold for gain, nor with any intention to deprave morality, but, as the defendant believed, to improve morality. It was sold by him as a member of the "Protestant Electoral Union," formed "to protest against those teachings and practices which are un-English, immoral, and blasphemous, to maintain the Protestantism of the Bible and the liberty of England. \* \* \* To promote the return to Parliament of men who will assist them in these objects and particularly will expose and defeat the deep-laid machinations of the Jesuits, and resist grants of money for Romish purposes."

Notwithstanding all these admitted facts the court held the pamphlet to be obscene and laid down this test: "Whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences, and into whose hands a publication of this sort may fall." It will be observed that it was criminal, if in the hands of any one imaginary person it might be speculatively believed to be injurious, no matter how much it tended to improve the morals of all the rest of mankind, nor how lofty were the motives of those accused, nor how true was that which they wrote. This is still the test of obscenity under our laws, and it has worked some results which could hardly have been in contemplation by our legislators in passing our laws against indecent literature.

#### THE BIBLE JUDICIALLY DECLARED OBSCENE.

One of the early American prosecutions of note was that of the distinguished eccentric, George Francis Train, in 1872. He was arrested for circulating obscenity, which it turned out consisted of quotations from the Bible. Train and his attorneys sought to have him released upon the ground that the matter was not obscene, and demanded a decision on that issue. The prosecutor, in his perplexity, and in spite of the protest of the defendant, insisted that Train was insane. If the matter was not obscene, his mental condition was immaterial, because there was no crime. The court refused to discharge the pris-

oner as one not having circulated obscenity, but directed the jury, against their own judgment, to find him not guilty on the ground of insanity, thus, by necessary implication, deciding the Bible to be criminally obscene.

Upon a hearing on a writ of habeas corpus, Train was adjudged sane, and discharged. Thus an expressed decision on the obscenity of the Bible was evaded, though the unavoidable inference was for its criminality.

In his autobiography, Train informs us that a Cleveland paper was seized and destroyed for republishing the same Bible quotations which had caused his arrest in New York. Here then was a direct adjudication that parts of the Bible are indecent, and therefore unmailable. (Here I think Train must be referring to the conviction of John A. Lant, publisher of the Toledo Sun.)

In 1895 John B. Wise of Clay Centre, Kansas, was arrested for sending obscene matter through the mails which again consisted wholly of a quotation from the Bible. In the United States Court, after a contest, he was found guilty and fined.

Just keep in mind a moment these court precedents where portions of the Bible have been judicially condemned as criminally obscene, while I connect it with another rule of law. The courts have often decided, that a book to be obscene need not be obscene throughout, the whole of it, but if the book is obscene in any part it is an obscene book, within the meaning of the statutes. (16 Blatchford 368.)

You will see at once that under the present laws and relying wholly on precedents already established, juries of irreligious men could wholly suppress the circulation of the Bible, and in some states the laws would authorize its seizure and destruction and all this because the words "Indecent and obscene" are not definable in qualities of a book or picture. In other words, all this iniquity is possible under present laws because courts did not heed the maxim, now scientifically demonstrable, viz. "Unto the pure all things are pure."

Of course, the Old Testament in common with all books that are valuable for moral instruction, contains many unpleasant recitals, but that is no reason for suppressing any of them. I prefer to put myself on the side of that English judge who said: "To say in general that the conduct of a dead person can at no time be canvassed: to hold that even after ages are passed the conduct of bad men cannot be contrasted with the

good, would be to exclude the most useful part of history." (Rex vs. Topham, 4 T. R. 129.)

I therefore denounce this law because under it may be destroyed books containing records of human folly and error from which we may learn valuable lessons, for avoiding the blight from violating nature's moral laws. Under our present statutes some of the writings of the greatest historians and literary masterpieces have been suppressed and practically all would be suppressed if the courts should apply to them impartially the present judicial test of obscenity.

"ALMOST FOURTEEN."

In 1892 Dodd, Mead & Co. published a little book entitled "Almost Fourteen," written by Mortimer A. Warren, a public school teacher. Before publishing it Mr. Mead submitted the manuscript to his wife and to the pastors of the Broadway Tabernacle, and of the Church of the Heavenly Rest, and to Dr. Lyman Abbott. All these endorsed its aim and tone.

After publication, there were of course prudes who criticised, but such papers as the Christian Union gave it a favorable review. The Rev. L. A. Pope, then pastor of the Baptist church of Newburyport, Mass., placed the book in the Sunday School library of his church, and purchased a large number at a reduced price, selling them at cost, simply that the young might read and learn, so well did he think of the book. In my own view it would be impossible to deal properly with the subject of sex and do it in a more delicate, inoffensive manner.

No question was raised about the book until 1897, when Albert F. Hunt, of Newburyport, Mass., was arrested for selling obscene literature. Mr. Hunt had made himself very unpopular as an aggressive reformer. He had attacked the police force, exhibited the iniquity of the city administration, exposed the sins of the city, such as the practice of taking nude photographs, the aggressions of the saloonkeepers, and exposed the owners of buildings leased for prostitution. He had many influential enemies. In this condition he secured permission to republish "Almost Fourteen" in his paper, was arrested, convicted, and fined.

I have no doubt in my mind that, judged by the scientifically absurd tests of obscenity as applied by the courts, this innocent book was criminal under the law against obscene

literature, because no doubt somewhere there existed some sexually hyperaesthetic person into whose hands it might come, and in whose mind it might induce lewd thoughts. The legislative "obscenity" takes no account of the thousands who might be benefited by such a book; it only asks if there may be one so weak that it might injure him.

After this conviction for circulating humanitarian literature of a most useful kind, the author of this good book was driven from his place as principal of the public schools, by the prudish bigotry of his fellow townsmen and employers. The book can now be had only with much of its most useful matter eliminated. We need liberty of the press for persons like Warren, Hunt, and Dodd, Mead & Co.

#### DR. KIME AND THE IOWA MEDICAL JOURNAL.

A very few years ago, Dr. Kime, the editor of the *Iowa Medical Journal*, was convicted of obscenity. He was a physician of high standing and a trustee of a medical college, in which a few young rowdy students were apparently endeavoring to drive out the women students. A protest to the college authorities resulted only in a two weeks' suspension. On further complaint, instead of protecting the women in their equal right to study medicine under decent conditions, the authorities excluded women altogether from the medical school. Filled with indignation, Dr. Kime reiterated his protest, and gave publicity to some of the methods of persecution, including an insulting prescription which appeared on the blackboard where all the class could see it. In his *Medical Journal* he wrote: "We had thought to withhold this prescription, owing to its extreme vulgarity, but we believe it our duty to show the condition exactly as it exists, and let each physician judge for himself as to the justness of the protest filed." Then followed the "obscene" prescription, the obscenity of which consisted wholly in the use of one word of double meaning.

For this he was arrested, and although supported by all four daily papers of his home city, by the clergy of all denominations, the presidents of the Y. M. C. A., the W. C. T. U., and the Western Society for the Suppression of Vice, and the Society for the Promotion of Social Purity, he was convicted, branded as a criminal, and fined. Judged by the absurd judicial tests of obscenity which are always applied, the conviction was unquestionably correct.



DR. MALCHOW AND "THE SEXUAL LIFE."

Connected with the Methodist Episcopal Church schools is Hamline University College of Physicians and Surgeons. C. W. Malchow was there the Professor of Proctology and Associate in Clinical Medicine. He was also the President of the Physicians and Surgeons' Club of Minneapolis, and a member of the Hennepin County Medical Society, the Minnesota State Medical Society, and the American Medical Association.

He wrote a book on "The Sexual Life" which received strong praise from educational and medical journals and from professional persons. I have seen commendatory reviews from ten professional magazines. While in press, he read a most perplexing chapter from the book to a meeting of Methodist Ministers and its delicate treatment of a difficult subject was strongly commended.

Yet under the absurd tests prescribed by the courts and in spite of the protests of the Minneapolis *Times* and *Tribune* Dr. Malchow and his publisher are now both serving a jail sentence, for selling through the mail, a high class scientific discussion of sex to the laity.

During the trial the court refused the defendants the right to prove that all in the book was true, holding, with all the judicial decisions, that their being true was immaterial in fixing guilt. An unsuccessful effort was made to prove the need for such a book because of the great ignorance of the public upon sex matters, and the "learned" judge remarked that he hoped it was true that the public was ignorant of such matters, and excluded the evidence. President Roosevelt being asked by members of Congress to pardon the convict because of the propriety of his book, is reported to have expressed an amazing regret that he could not prolong the sentence.

CLARK'S MARRIAGE GUIDE.

In Massachusetts one Jones was arrested for sending through the mails "Clark's Marriage Guide." It must already be apparent that under the laws in question no one can tell in advance what is or is not criminal, because no one can predetermine what will be the opinion of a judge or jury upon the speculative problem of the book's psychological tendency upon some hypothetical reader suffering from sexual hyperaestheticism. Unfortunately, Mr. Jones went for advice to a lawyer who must have been a good deal of a prude, and who

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therefore advised his client to plead guilty, which he did. Later when Judge Lowell was called upon to impose the sentence, he is reported as having said that the book "is not immoral or indecent at all," and imposed only a very light fine. In Chicago the same book was suppressed by heavy fines; aggregating over \$5000.00.

"FROM THE BALL-ROOM TO HELL."

This book has the endorsement of practically all opponents of dancing. It furnished the suggestions for thousands of sermons; it had the commendation of innumerable clergymen, including several bishops; it went through the mails unchallenged for 12 years. A Chicago postal official now declares it criminally "obscene" and the book is suppressed. Again it is not a rule of general law which makes this book criminal, but the whim or caprice of a postal subordinate.

MRS. CARRIE NATION ARRESTED.

Most of the literature intended to promote personal purity is so veiled in a fog of verbiage as to be utterly meaningless to the young, because they lack the intelligence which alone could make it possible to translate the innuendoes into the mental pictures which the words are supposed to symbolize. Recently Mrs. Carrie Nation in her paper published some wholesome advice to small boys. She used scientifically chaste English and took the trouble to define the meaning of her words. She wrote so plainly that there was actually a possibility that boys might understand what she was trying to teach them. She wrote with greater plainness than some of those books which have been adjudged criminally obscene.

A warrant was issued for her in Oklahoma, for sending obscene matter through the mails. She being then in Texas on a lecture tour, was there arrested and taken to Dallas before a U. S. Commissioner. Fortunately she found there a U. S. Attorney with some sense, who, though he did not approve of her taste, consented to the discharge of the prisoner. Mrs. Nation is to be congratulated upon having discovered one spot in this country not dominated by the prurient prudery of New England and New York. Unfortunately none can know when and where another healthy-minded prosecutor will be found.

CRIMES THROUGH IGNORANCE.

The matters condemned under these statutes are of such a

character that persons with the most enlightened conscience would not even suspect that they might be committing an offence against this law. So, many become criminals through the most excusable ignorance.

Many books which should be circulated are suppressed by mere threats of prosecution, or a fear of it, resulting from the fact that no one can tell with certainty what is, or what is not, within the law. Even judges in deciding cases before them have reached different conclusions concerning the obscenity of the very same book, and several men have been pardoned because the President did not believe a book to be obscene which a judge and jury had declared to be so. Sometimes the Postal authorities declare a book not to be obscene, and some State official declares it is obscene, and arrests the vendor; sometimes conditions are reversed. No one can ever tell whether he is committing a crime or not. A book which goes through the Chicago Post-Office in thousands per annum, is excluded from the Boston Post-Office, when offered by the Boston agent of the Chicago publisher. In California one Price was sent to jail for circulating a book whose substance was substantially like that in the Hicklin case above described. In the Middle West an ex-priest published another such book, containing substantially the same matter, and I am informed he received the commendation of a Post-Office Inspector, and was assured that they were both engaged in the same effort of destroying the influence of Catholicism.

Very recently another book by one of the best known lecturers and writers upon social purity and published for six years by one of the largest producers of Evangelical literature in America, was suddenly found to contain matter which made them criminals for every copy they had advertised or sent through the mails.

Years ago it was discovered that the President of a Society for the Suppression of Vice, in the regular course of his business, was sending through the mails circulars which were clearly prohibited by law. Some enemies made an effort to have him indicted. Owing to circumstances not bearing upon the criminal character of the circular, a prosecution was prevented, and the prohibited business was discontinued.

#### STUDIES IN THE PSYCHOLOGY OF SEX.

In England, under a law just like our own in its description of what is prohibited, Dr. Havelock Ellis' "Studies in the

Psychology of Sex," I believe have been wholly suppressed as obscene. These studies are so exhaustive and collect so much original and unusual information that they mark an entirely new epoch in the study of sexual science. The German edition of this very superior treatise is denied admission into the United States, to protect the morals and perpetuate the ignorance of the German-American physicians. Furthermore, no one can doubt that their exclusion is in strict accord with the letter of the statute as the same is ignorantly interpreted through the judicial "tests" of obscenity.

That scientifically absurd test is decisive even though applied to a scholarly treatise upon sex, circulated only within the medical profession, for the statute makes no exception in favor of medical men. An impartial enforcement of the letter of the law, as the word "obscene" is now interpreted, would entirely extirpate the scientific literature of sex. So deeply have the judges been impressed with this possible iniquity, that by dictum, quite in excess of their power, they have made a judicial amendment of the statute, excepting from its operation books circulated only among physicians. Such judicial legislation of course is made under the pretense of "statutory interpretation" and involves the ridiculous proposition that a book which is criminally obscene if handed to a layman, changes its character if handed to a physician; it assumes that a scientific knowledge of sex is dangerous to the morals of all those who do not use the knowledge as a means of making money in the practice of medicine, and that it becomes a moral force, when, and only when, thus employed for pecuniary gain. To send to you purity workers the standard scientific literature of sex is a crime. You purity workers, cannot be trusted to have accurate information. Public morals demand your ignorance. The suppression of the American edition of "Studies of the Psychology of Sex" only awaits the concurrence of caprice, between some fool reformer and a stupid jury. The some statutory words which are adequate to exclude the German edition will determine the suppression of the American edition.

#### COMPATIBILITY OF THE OBSCENE AND USEFUL.

I must make it still more clear to you that a book may be "obscene" within the judicial "tests" and yet be a most useful book. To this end let me indulge in a little more exact analysis of that judicial nonsense, called the "test" of obscen-

ity. The judicial language is: "The matter must be regarded as obscene if it would have a tendency to suggest impure and libidinous thoughts in the minds of those open to the influence of such thoughts." (U. S. vs. Bennett. Fed. Case 14571.) Please keep that test in mind during a little digression.

What do we mean when we say we have read a sentence understandingly? Clearly it is this, that we have translated the words into the mental picture which they symbolize. If I use in your presence the word "hemi-tetragonal-trisectahedron" it means nothing to you unless you can and do, in imagination, combine the several forms represented by the separate parts of the word and thus reconstruct in your mind the image of some definite crystallographic form.

So it is with all other words. Of what use is it to denounce the "sins of Sodom and Gomorrah" to those who do not know what acts constituted those sins, and who may think you are denouncing a "faith cure"? That denunciation is understood only by those who are intelligent listeners, made such by their act of translating the words into the corresponding mental picture. The same is true of all sex, or other discussion. To a child not knowing the meaning of the words it is the same if you say, "Thou shalt not commit prophyloxia," or "Thou shalt not commit adultery." The latter injunction is of worth only as the hearer knows what is meant by adultery and forms a mental picture to correspond with the word-symbol. Necessarily the words "Thou shalt not commit adultery" "have a tendency to suggest" the thought of adultery, which of course is libidinous, and in minds of diseased sex-sensativeness, "open to the influence of such thoughts" it would tend to induce prohibited conduct. But, this corresponds to the judicial "test" of obscenity, and it follows, if we had an impartial application of this absurd "test," the ten commandments must be suppressed as "obscene."

#### UNCERTAINTY IN THE CRIMINAL LAW.

Under a law of such vagueness, and such all-inclusiveness, nothing can escape suppression, except as a matter of judicial discretion. Men are prosecuted and punished as criminals not according to the letter of any general law, but according to the whim, caprice, prejudices or personal malice, of informers, courts and juries, whose judgment in such matters necessarily becomes legislative, and not executory, and is always applied ex post facto, so that no man can tell in advance of his

arrest and trial whether he is committing an offence or not, because no man can tell in advance what will be another man's opinion as to a speculative question about the psychologic tendency of a book.

It is high time that courts annulled this infamous law by applying the old maxim "Where the law is uncertain there is no law."

#### ON THE "SEXUAL NECESSITY".

I would deceive your reasonable expectations if I failed to deal frankly with you in this little heart to heart talk. I can be helpful only as I broaden your outlook by calling attention to view-points usually overlooked. In justice to you I must present another question which is generally slighted and which I do not assume to decide for you. I mention it only that you may think it over at your leisure.

It was late in life with me before I heard of the existence of the doctrine that for the average person life long continence was incompatible with the best health. My first information, that anyone believed this, came to me through a tract of the Woman's Christian Temperance Union, in which the doctrine was denied. I remember thinking that theirs must be a doubtful cause, which relied not on fact and argument, but upon an extremely short dogmatic statement, followed by a long list of eminent names evidently intended to inspire awe and preclude rational inquiry. The general circulation of the contrary opinion would probably be criminal, even though it could be proven to be true. Should we also remove this barrier? Let us see.

In recent years I have looked a little farther into this matter, and find that the statements to the *general public* endorsing the compatibility of health and continence are perhaps most willingly made by specialists in venereal infections. There are those physicians who doubt the statement, yet justify falsehood in the matter. On the other hand, a majority of books written for the *medical profession* upon sexual psychology, nervous diseases, and insanity, if they are not silent upon the matters, indicate that lifelong continence, and perfect health are incompatible except for the very few exceptionally conditioned.

Evidently it requires more careful observation, more accurately collected data, more exactness of statement, and more closely reasoned argument than we have yet had, to settle this

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question. This in turn requires more freedom of the press than we now enjoy. Many of you remember the arrest in 1889 of the editor of "The Christian Life" for publishing an argument for "Marital Purity" written by the Rev. C. E. Walker. No doubt an argument for the "sexual necessity" would also be suppressed as obscene. However that is not yet the precise problem which I wish to leave with you, though it suggests the other.

Sometimes we are led into error by looking too intently upon one consequence of our conduct, instead of weighing all consequences. I suggest to you that you take a second thought concerning your desire to circulate the assurance that life-long continence and health are compatible, and also that after mature reconsideration, you ask yourself over again if we had not better repeal the law which now suppresses the publication of any discussion of the subject.

If you expect to be believed when you assert the compatibility of health and continence, then you are making the strongest possible argument against marriage itself, because you are asserting that there is no natural necessity for it. Since scientists are not agreed upon this question, it is at least a little presumptuous for anyone, especially laymen, to dogmatize about it. Under the circumstances, you cannot be certain that your advice, if followed, will not prove a pit-fall to the average person, because conducing to auto-erotism, hysteria, eroto-mania, sexual perversion, and other horrors. There is one question to which you should give some deliberate and dispassionate consideration, earnestly endeavoring to avoid self-deception. The need for this will grow upon you with reflection. That question is this: Until medical men are agreed upon the facts, may it not be just as well for us to argue the natural necessity for monogamy, by urging the great danger of promiscuity, and admitting the "sexual necessity?" Surely the two together make a most potent inducement to marriage, whereas to deny the latter is to say that marriage is unnecessary, which conviction may in the end lead to many solitary and social vices, in those who should mistake our good motives for great wisdom. Above all we must learn the facts. This we can do only by encouraging physicians to be frank: Scientists must be permitted and inspired to tell us in public what they think in private, about the compatibility of *life-long* continence and health.

#### THE MORE UNPLEASANT FEATURES.

This, then, brings me to the more unpleasant features, which relate to sexual insanities, and venereal infection. No one worthy to be counted a purity-worker can overlook these most important phases of the sex problem. Here I must express my very great satisfaction in being permitted to first deliver this discourse to you earnest men and women, who without trembling, seek the truth for the good it may enable you to do. Like all truly pure minded people you have banished the phantoms of a prurient fear. Among you there can be no need for the secretiveness of diplomacy, the methods of indirection and innuendo, nor the hypocrisy of evasion. If these artifices were necessary I should not have accepted this invitation to address you, because I am not skilled in such methods. I know only the use of the plain, direct, and scientifically chaste manner of speech. It is only by the use of such that I can proceed, while I briefly recapitulate some concrete facts known to the medical profession, and by me culled from standard medical authorities.

#### SEX IGNORANCE AND INSANITY.

Picque found a proportion of 88% of gynecological affection among the insane, and some have found even more. It is quite generally estimated that of all insanities 66% involve the sexual mechanism or functioning. Where sex is the primary cause of the ultimate derangement, sex-intelligence usually could wholly preclude the evil consequences, or find an early cure. In other cases where there is some sexual derangement it is at first but a symptom of mental ailment, only in turn to become an aggravating cause. Here a greater intelligence on the part of friends and family, such as the general dissemination of the literature of sexual science would produce, will enable them to understand what now seems dubious, and impel them to apply much earlier for medical aid, when it would be far more efficacious. Legislators and courts now treat the sex-pervert as a criminal, thereby discrediting both our intelligence and our humanity. In an enlightened community we will know that usually such are diseased, and thus be prompted to restore them, rather than wreak vengeance upon them.

#### SUFFERING OF THE VICIOUS TO SAFEGUARD VIRTUE.

A study of venereal infection gives us some appalling re-



sults. Every year in our country perhaps hundreds of thousands of persons become its victims. Owing to public ignorance and a mawkish sentimentalism, many of these persons cannot secure treatment from the regular physician, nor will be received in many hospitals. It is argued that to make them suffer the penalty of vice is the best safeguard to virtue. Even if the transgressors were the only sufferers, it would still be an unpardonable inhumanity not to cure them if possible, because in such cases they too often suffer in the inverse ratio of their familiarity with the vicious. More general education conduces to more justice in fitting the natural punishment to the crime. All disease is the result of some form of vicious living, and if we are to be guided by such irrational afforisms, we must abstain altogether from trying to relieve human suffering. The pains of dyspepsia or rheumatism must be endured lest by their cure we make vicious eating safe; dipsomania and delirium tremens must remain uncured lest we make alcoholic beverages safe.

#### VENEREAL INFECTION AND SUFFERING OF THE INNOCENT.\*

When we come to consider the suffering which is unnecessarily inflicted on the ignorant, innocent, by adherence to this absurd dogma, then the public's indifference toward the cure of venereal diseases becomes almost criminal. It is not infrequent that a syphilitic child will infect its uninformed nurse, or an infected wet nurse not knowing her own condition transmits the disease to the child under her care. Unnumbered persons become infected merely by a common use of eating, drinking, or toilet utensils.

That you may properly understand just how infamous is the taboo which we have placed upon this subject let me go more into detail, and here I charge you specially to observe the suffering of the innocent. Eighty per cent. of the blindness of the new born, and twenty per cent. of this terrible affliction from all causes, is due to gonococcus infection, as also is a large proportion of vulvo-vaginitis and joint affections of children. Dr. Neisser estimates that at present there are in

\*Practically all of this information about venereal infection is taken from "Social Diseases and Marriage," by Dr. Prince Morrow, and from the publications of the Am. Soc. for Sanitary and Moral Propylais, of which he is President.

Germany about 30,000 blind persons who owe their affliction to this cause. In America no statistics are available.

Pinnard found that in 10,000 consecutive cases of miscarriage or abortions 42% were caused by syphilis, the remaining 58% were due to all other causes combined. The mortality from hereditary syphilis ranges from 60 to 80%, while those who survive are affected with degenerative changes which unfit them for the battle of life. Syphilis in France alone, kills every year 20,000 children, or 7½% of the mortality from all causes combined. It is computed that 50% of all gonorrhoeal women are absolutely sterile, and gonorrhoeally infected men are responsible for 20% of the involuntary sterile marriages. Sixty per cent. of the children born of syphilitic mothers die in utero, or soon after birth. Only two in five will survive even through a short life; 20 to 30% of gonorrhoeally infected women abort and from 45 to 50% are rendered irrevocable sterile.

Fournier's general statistics, embracing all classes of women, show that one in every five syphilitic women contracted syphilis from their husbands soon after marriage. Among the married females in his private practice, in 75% of the cases the disease was unmistakably traced to the husband. D. Bulkley's statistics, in "Syphilis in the Innocent," state that in private practice fully 50% of all females with syphilis, acquired it in a perfectly innocent manner, while in the married females 85% contracted it from their husbands. The report of a medical committee of seven gave it as from 30 to 60% of the syphilitic women who had the disease communicated by the husband. Dr. Morrow in his experience in the New York Hospital found that 70% of the women who applied for treatment for syphilis were married and claimed to have received the disease from their husbands. 60% of all gynecologic surgical operations are chargeable to gonococcic infection.

To emphasize the danger which comes to the innocent from the infamous and ignorant conspiracy of silence, let me quote these awful words from a specialist of high authority. He says: "It may be a startling statement but nevertheless true, that there is more venereal infection among virtuous wives than among professional prostitutes in this country." The latter being the more intelligent in such matters use personal prophylaxis, and secure treatment earlier after infection, while the ignorant virtuous wife continues to suffer in silence. In

view of this appalling condition what are you going to say to those moral sentimentalizers, who for fear of making vice safe, seek to penalize all announcements that venereal diseases can be cured? Will you by education help protect the innocent sufferers or will you through moral cowardice give silent support to the infamous taboo upon sexual education?

#### THE "MUSEUM OF ANATOMY".

Connected with this subject of publicity about venereal infection, and its relation to purity, I shall presume to relate a personal experience. When a boy of 15 years, I left the parental home to find work in Chicago.

I soon discovered here a Museum of Anatomy conducted by one of those persons whom we contemptuously call "quacks", because they advertise their willingness to treat diseases which many compassionless moral snobs in the medical profession refuse to treat, which refusal as I have shown results in so much suffering to the innocent.

In this Museum, for a trifling admission fee, I saw perfect imitations in wax of all the indescribable horrors, consequent upon venereal infection. Of course the exhibition was obscene and indecent beyond description, but it was something more as well. It was an object lesson giving ocular demonstration of the terrible consequence of promiscuity and could not do otherwise than to inspire a wholesome fear of which I have not rid myself to this day. The vividness of the impression produced by one such sight would far surpass all the moral and religious sermons that could be preached from now till doomsday, because the innuendos or even the direct statements can mean nothing to the child-mind, before it is possessed of the experience which enables it to translate the words into corresponding mental pictures.

Nowadays such museums are suppressed because of their obscenity. It is deserving of consideration whether such forces for good had not better be encouraged by their attachment to our public schools, in preference to their suppression because shocking.

#### INTELLIGENCE AS TO VENEREAL DISEASE SUPPRESSED.

I have now shown the practical operation of the doctrine that to make men suffer the penalties of vice is the best safeguard to virtue, yet if you would issue general instructions for the detection of venereal infection, or for personal pro-

phylaxis, all prurient sentimentalists, would say you are making vice safe, you must go to jail for your "obscenity" and the "immoral tendency" of your book. Thus it is that the innocent must continue to suffer, and the family physician continues to lie to the wronged wife, in order to protect her husband, and maintain the "sanctity" of such a home. Infected husbands must be screened at any cost of suffering to the innocent wife and children, simply because we are afraid that someone will say we are trying to safeguard vice.

In many states efforts have been made, and have almost succeeded, by which it would be criminal even in a hospital report or a professional treatise on venereal disease to make it known where or how sexual ailments could be cured, and the excuse offered is that such information tends to make vice safe.

Recently a distinguished purity worker connected with this conference issued a wholesome little pamphlet entitled "Not a toothache or a bad cold," which was suppressed by threat of arrest, though the Post-Office authorities had declared it mailable.

Quite a number of physicians have been arrested and convicted for sending through the mails information as to venereal diseases. One of these books, which serves as a type for all, has been thus described by a former assistant Attorney General of the Post Office Department. He says the book "consisted mainly of a description of the causes and effects of venereal diseases, and secondly two circulars one of which described in separate paragraphs the symptoms of various venereal diseases." That was held to be criminal.

"The Social Peril." is a book dealing with venereal infection, and is by one of the best known purity workers in America. Mr. Comstock threatened him with arrest for "obscenity" partly for a 15 page quotation from a book by Rev. Henry Ward Beecher. The book is suppressed.

#### DEMAND OPPORTUNITY FOR KNOWLEDGE.

I have tried to point out the urgency for general education and the laws which preclude it. I cannot doubt that you are quite convinced that the situation is sufficiently grave to demand an immediate change if we would maintain a semblance of purity. I submit that a decent regard for the moral welfare of the community, or for the innocent sufferers of venereal infection, compels us to demand for the general public

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such liberty of the press, and other means of publicity, as will protect each in his right to learn and to know, just how terrible are the ravages of these diseases—how their presence may be detected—and that they can be cured.

ON THE DANGERS OF LIBERTY.

It is perhaps apparent to you that our present tests of obscenity are grossly ridiculous in their results if impartially applied, and I am sorry to confess that I cannot furnish a better, because what is deemed objectionable is always a personal matter which cannot be defined in general terms. Furthermore, no man can tell a priori, what is of bad tendency. If you have received the right training from your parents or preceptors, even the worst bawdy picture may produce a wholesome revulsion. Once open the door to all serious discussions of sex, and soon the healthy curiosity will be satisfied, which now becomes morbid only from the denial of satisfaction. No one thinks of caricaturing the reproductive mechanism of our domestic animals only because no one has any morbid curiosity about it, because there is no concealment. With the development of healthy mindedness through sexual education in our schools, all morbidity of curiosity would disappear in one generation. The demonstration of this is to be found among art students.

Years ago when it was proposed to prohibit the sending of abolition literature through the mails, because of its "immoral" tendency toward insurrection, the Hon. John P. King, a United States Senator from the South, protested and said: "I prefer the enjoyment of a rational liberty at the price of vigilance and at the risk of occasional trouble, by the error of misguided or bad citizens, to the repose which is enjoyed in the sleep of despotism." With this I concur. Liberty has dangers of its own, which we must overcome, or forego progress. If we have confidence that we have right on our side, we need not fear open discussion and warfare with error.

CRADDOCK AND STOCKHAM CASES.

As illustrating how our fears are often but the product of ignorance, I am going to relate to you how and why I changed my mind about two booklets pronounced "the most obscene" that ever came to the criminal court. If these really are the most offensive of condemned literature then I am prepared to stand all the rest. Both were entitled "The Wedding

Night", and dealt with their subject in a very detailed manner. One was by an unfortunate woman named Ida Craddock, who styled herself a "purity lecturer." Mr. Comstock denounced her book as "the science of seduction." It could have been more accurately described, as advice for the best means of consummating the marriage. The judge who sentenced the author called it "indescribably obscene." To one who, from diseased sex-sensitiveness, is incapable of reading a discussion of sex functioning with the same equanimity as would accompany a discussion of lung functioning, or to one who would apply the absurd judicial "tests" of obscenity, this booklet must appear just as these men described it. Of course she was found guilty. Later she committed suicide to escape the penalty of the law.

For the book Mrs. Craddock claimed to have the endorsement of several prominent members of the Woman's Christian Temperance Union, and published a letter from the Rev. W. S. Rainsford, the very distinguished rector of the fashionable St. George's Episcopal Church of New York City, in which he said: "This much I will say, I am sure if all young people read carefully 'The Marriage Night,' much misery, sorrow, and disappointment could be avoided."

The other booklet was by Dr. Alice Stockham, the well known author of Tokology and similar books, and in name and substance, I believe it was very much like the Craddock book. A Post Office Inspector pronounced it the most obscene book he had ever read. She was convicted and heavily fined, though with many friends she vigorously defended the propriety and necessity for her booklet of instructions. Of course neither of these books nor any like them are now anywhere to be had.

The question is what good could be done by such books, so unquestionably obscene, if judged by present judicial standards? I confess that when first I heard of these cases I knew of no excuse for the existence of this unpleasant literature.

I had read in medical literature statements like this: "The shock and suffering endured by the young wife, in the nuptial bed, is too frequently prolonged into after-life, and may seriously mar the connubial bliss." (The Sexual Life p. 127.) Such generalizations however meant nothing to me until a strange set of circumstances came to my notice which I will relate to you in the order of their occurrence.

Not long since I learned of the marriage of persons in a most conservative social set. The couple had been chums since childhood and engaged lovers for many years. After this long waiting, came the joyously anticipated wedding, and the bride was the ideal picture of radiant love. The day after her marriage, she acted strangely, and by evening, her husband and relatives concluded that her reason had been dethroned, and ever since, she has been confined in a sanitarium. Through her incoherent speech, only one thing is sure and constant, and that is that she never again wants to see her husband. More information is not given to the conservative circle of her friends. All profess ignorance as to the immediate cause of this strange mania, which reverses the ambition, hope, and love of a lifetime.

Strangely enough, within two days after hearing this painful story, a friend handed me the Pacific Medical Journal, for January, 1906. (Article by R. W. Shufeldt, M. D.; Major Medical Department of U. S. Army, and Trustee of the Medico-Legal Society of New York). Therein I read the following paragraphs and to me the mystery had been solved. Now I thought I knew why one bride had her love turned to hate, her mind ruined, and why her relatives were so shamefacedly silent, lest some should learn a useful lesson from their affliction.

The material portion of the article reads as follows: "While upon this point I would say that under the so-called sanctity of the Christian marriage, untold thousands of the most brutal rapes have been perpetrated, more brutal and fiendish indeed, than many a so-named criminal rape. So outrageous has been the defloration of many a young girl-wife by her husband, that she has been invalided and made unhappy for the balance of her natural life. There are cases on record where so violently has the act of copulation been performed that the hymen being thick and but slightly perforated, death has followed its forcible rupture, and the nervous shock associated with the infamous proceeding. Here the criminally ignorant young husband and the ravisher are at par, and no censure that the world can mete out to them can be too great."

And now I thought I had received new light on those strange and not infrequent accounts one reads in the newspapers, of young women who commit suicide during their "honeymoon."

Here another strange chance led me upon Dr. Mary Walker's book "Unmasked, or the Science of Immorality," where I read the following paragraph: "There are instances of barrenness, where the only cause has been the harshness of husbands on wedding nights. The nerves of the vagina were so shocked and partially paralyzed that they never recovered the magnetic power to foster the life of the spermatozoa until the conception was perfected."

With this much I went to a physician friend, and he promptly confirmed all that had been said by the others and handed me "Hygiene of the Sexual Functions, a lecture delivered in the regular course at Jefferson Medical College of Philadelphia, by Theophilus Parvin, A. D., M. D., Professor of Obstetrics and Diseases of Women and Children." On page two I read the following: "Occasionally you read in the newspapers that the bride of a night or of a few days, or of a few weeks, has gone home to her parents, and never to return to her husband; but there is a Chicago divorce concluding the history. One of the most distinguished French physicians, Bertillon, has recently said that every year, in France, he knows of thirty to forty applications for divorce within the first year of marriage, and he has reason to believe that a majority of these are from the brutalities of the husband in the first sexual intercourse."

After reading these statements from highly reputable physicians, I could no longer doubt that these "most obscene" books ever published, were really most humanitarian efforts on the part of those who perhaps had a wider knowledge than I possessed. If this is the worst, I am prepared to take chances on lesser obscenity.

#### WHAT SHOULD BE DONE ABOUT IT.

This then brings us to the question as to what we can do or should do to improve the situation. The answer to the question necessarily depends upon what ends you have in view. It seems to me that first and foremost, it should be desired that whatever may be the law upon the subject, it shall be made so certain as to what is prohibited, that every person of average intelligence by the mere reading of the statute may know whether he is violating the law or not. This of course implies the abolition of our present "tests" of obscenity, which makes guilt depend upon the jury's speculative opinion about a doubtful psychologic tendency.



I know of no method by which such tendencies can, with certainly, be determined in advance of actual experience with the particular book or picture, and even then there can be no method by which we may with certainty balance the evil effects upon some minds against the beneficial effects upon other minds, both being the result of the same book. Personally, it seems to me, that every adult has the same right as every other to select for himself or herself whatever literature or art they may see fit to enjoy. This equality of right does not obtain in the favor of minors. What they shall be permitted to know or read is properly a matter of discretion with others.

Those who reason sanely it seems must conclude that when any person is old enough by law to enter matrimony, which involves actual sex experience, then they should be conclusively presumed competent to choose for themselves the quantity and quality of psychic sex stimuli they wish to have, and whether it shall come through the means of good or bad art, literature, drama, or music. It is not clear to me why we should seek by law to control the sexual imaginings of those persons to whom it accords a perfect right to sexual relations.

I can even see force in the methods of the ancient Greeks who believed that dancing and athletics in nudity conduced to honored marriage. Upon this subject the Rev. John Potter, late Archbishop of Canterbury, has this to say: "As for the virgins appearing naked, there was nothing disgraceful in it, because everything was conducted with modesty, and without one indecent word or action. Nay, it caused a simplicity of manners and an emulation of the best habit of body; their ideas, too, were naturally enlarged, while they were not excluded from their share of bravery and honour. Hence they were furnished with sentiments and language, such as Gorgo, the wife of Leonidas, is said to have made use of. When a woman of another country said of her. 'You of Lacedaemon, are the only women in the world that rule the men,' she answered, 'We are the only women that bring forth men.'" (*Archaeologia Graeca*, p. 645, Glasgow, 1837.)

Those who esteem mere psychic lasciviousness a more serious offense than the corresponding physical actuality, lay themselves open to be justly accused of erotomania. How can we expect even married people to live wholesome

lives so long as we deny them the opportunity for any detailed discussion as to what tends toward wholesomeness?

It, therefore, seems to me that the only thing which can properly be done is to repeal all present laws in-so-far as they effect adults, and open the whole subject for general discussion, allowing truth and error to grapple with each other for supremacy.

By giving the widest possible scope for the dissemination, among adults, of the scientific literature of sex, and by furnishing appropriate instruction in our public schools, the present morbid curiosity would soon be dissipated and within a generation practically all parents could be made competent and judicious instructors and guides for their own children. With this accomplished, you need never again fear the ills which are now dreaded, and the present sexual intelligence would have been so much improved as to insure a very general progress in public morals. Thus through the greatest liberty of speech and press for the instruction of all over 18 years of age, we may reasonably hope to secure for the next generation an enlightened conscience as to all questions of sexual health and morals.

## WHAT IS CRIMINALLY "OBSCENE"?

BY THEODORE SCHROEDER.

This essay was a part of the proceedings of the *XV Congres International de Medicine, section XVI Medicine Legale*, held at Lisbon, Portugal, April, 1908, and also published in the Albany Law Journal for July, 1908.

The English Parliament, the Congress of the United States, and all the States of the American Union, have penalized "lewd, indecent and obscene" literature and art. All this legislation, and the judicial interpretation of it, proceeds upon the assumption (false assumption, as I believe) that such words as "obscene" stand for real qualities of literature, such as are sense perceived, and, therefore, permit of exact general definition or tests, such as are capable of universal application, producing absolute uniformity of result, no matter by whom the definition or test is applied, to every book of questionable "purity."

Under these laws, as administered in England and America, every medical book which treats of sex—and many which do not—are declared criminal, and their circulation even among professionals is a matter of tolerance, in spite of the law, and not a matter of right under the law. The infamy of such a statute has induced some American courts, under the guise of "interpretation," to amend the statute judicially, so as to exempt some medical book, otherwise "obscene," from being criminal if circulated only among some professional men. What the judicial legislation will be, must always depend in each case upon the court.

If an accurately definable character of the word "obscene" is not implied in all our laws penalizing the "indecent," then they do not prescribe a uniform rule of conduct, and are there-

fore beyond the power of any English or American legislature to enact. That such is the assumption, is further evidenced by the fact that no legislative definition or test is furnished, and courts assert that none is necessary, since these are matters of common knowledge. (96 N. Y. 410.)

That assertion, I believe, is based upon lack of psychologic intelligence, and it is here intended to outline an argument to demonstrate its falsity. Be it remembered, that this is a question in the science of psychology. It is not a question of ethics, nor law, nor legislative expediency, but ever and always a matter of science, which must underlie all these. If my contention is correct, then present obscenity laws are a nullity, for want of a definition of the crime, and for the non-existence of that which the statute seeks to punish. I will prove that "obscenity" is ever and always the exclusive property and contribution of the reading mind.

Nothing will be herein contended for, which will preclude the passage of some other laws designed to accomplish some of the same ends, which some people think justify our present laws against "impure" literature. To illustrate: Except when done by parents, guardians, et al, it could be made a crime to sell, or transmit, etc., to any person under the age of consent, any book containing such word as "sex," or any picture of the sexual mechanism. In such a law, all the conditions of the crime would easily be prescribed with that exactness, which leaves no room for such objections as I am now going to make against the existing statutes.

Such a law would not, and should not, assume to decide, nor authorize a jury to decide, what is good or bad literature. It would simply assume the incompetence of children to judge for themselves what information they desired, and at the same time accord that rightful liberty to adults.

In 1661, the learned Sir Matthew Hale, "a person than whom no one was more backward to condemn a witch without full evidence," used this language: "That there are such angels [as witches], it is without question." Then he made a convincing argument from Holy Writ, and added: "It is also confirmed to us by daily experience of the power and energy of these evil spirits in witches and by them." (Annals of Witchcraft, by Drake, preface XI.)

With the same assurance, and no less ignorance of science—as we hope to show—our courts now affirm that the

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differential tests of obscenity "are matters which fall within the range of ordinary intelligence," and, therefore, "everyone who uses the mails . . . must take notice of what, in this enlightened age, is meant by 'decency, purity and chastity in social life,' and what must be deemed obscene, lewd and lascivious." (U. S. vs. Rosen 161 U. S. 42.)

This appeal, to the consensus of opinion in "this enlightened age," has been made in support of every superstition that has ever paralyzed the human intellect. It would be more reassuring if judges had given, or would give, us a test of obscenity, in terms of the objective, sense-perceived qualities of literature, *by which test alone* we could unerringly and with unavoidable uniformity, draw the same, exact, unshifting line of partition between what is obscene and what is pure in literature, no matter who applies the test. Until they furnish such a test to us, their dogmatic assurance that "this enlightened age," possesses such undisclosed knowledge of standards, is not very satisfactory. Without such a test, there is no uniform law to control our conduct, nor that of our courts or juries.

Whenever one affirms that obscenity is not a quality of literature or art, but solely a contribution of the unhealthy reading mind, and, therefore, opposes the obscenity prosecutions, or questions any other sex-superstition, he is promptly cowed into silence by an avalanche of vituperation, such as "impure," "immoral," "smut-dealer," "moral cancer-planter." Such epithets may be very satisfying to undeveloped minds, but they will not commend themselves very highly to any person wishing to enlighten his intellect upon the real question at issue. Again we say: This is a matter of science, which requires fact and argument, and cannot be disposed of by question-begging villification.

The courts are more refined, though not more argumentative nor convincing, in their manner of denouncing dissenters. The judicial formula is this: "When such matters are said to be only impure to the over-prudish, it but illustrates how familiarity with obscenity blunts the sensibilities, depraves good taste, and perverts the judgment." (45 Fed. Rep. 423.) Again we ask for fact and argument, not question-begging dogmatism. The statute furnishes no standard of sex sensitiveness, nor is it possible for any one to prescribe a general rule of judgment, by which to determine where is the beginning of the criminal "blunted sensibilities," or the limit of "good

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taste," and the law-making power could not confer this legislative authority upon a judge, though in these cases all courts are unconsciously presuming to exercise it.

Furthermore, it is not clear that "blunted sensibilities" are not a good condition to be encouraged in the matter of sex. Who would be harmed, if all men ceased to believe in the "obscene," and acquired such "blunted sensibilities" that they could discuss matters of sex, as we now discuss matters of liver or digestion,—with an absolute freedom from all lascivious feelings? Why is not that condition preferable to the diseased sex-sensitiveness so often publicly lauded, when parading in the verbiage of "purity?" If preferable, and so-called "obscene" literature will help to bring about such "blunted sensibilities," would it not be better to encourage such publications? It requires argument and fact, rather than "virtuous" platitudes, to determine which is the more healthy-minded attitude toward these subjects. I plead for scientific research, not the brute force of blind dogmatism and cruel authority.

Assuming its existence as a quality of literature, the judicial "tests" for detecting the presence of obscenity, manifest such extraordinary ignorance of sexual psychology, that no man who is accused can reasonably expect to escape conviction by denying the character of his book. The unfailing verdict of "guilty" is not, as some flatter themselves, due to the wisdom of the prosecutors, but is wholly due to the judicial ignorance of science, and to the undefined and indefinable nature of the offense. Let us reason together about this.

If, in spite of the argument by vituperation, a person refuses to submit, "with humble prostration of intellect," to the demands of moral snobbery, he is cast from the temple of "good society" into jail. Then the benighted act as though by their question-begging epithets or jail commitment, they had solved the scientific problem which is involved. Let us examine if it is not as true of obscenity as of every witch that it exists only in the minds of those who believe in it.

My contention is this: "Obscenity" is not an objective fact, not a sense-perceived quality of literature or art, but is only distinguishable by the likeness of particular emotions associated with an infinite variety of mental images. Therefore, obscenity is only a quality or contribution of the viewing mind which, being associated with some ideas suggested by a book or picture, is therefore *read into it*. This may be proven in

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many ways, and among these, by the resultant fact that "obscenity" never has been, nor can be, described in terms of any universally applicable test consisting of the sense-perceived qualities of a book or picture, but ever and always it must be described as subjective, that is, in terms of the author's suspected motive, or in terms of dreaded emotions of speculative existence in the mind of some supposititious reader.

With some knowledge of the psychologic processes involved in acquiring a general conception, it is easy to see how courts, as well as the more ignorant populace, quite naturally fell into the error of supposing that the "obscene" was a quality of literature, and not—as in fact it is—only a contribution of the reading mind. By critical analysis, we can exhibit separately the constituent elements of other conceptions, as well as of our general idea of the "obscene." By a comparison, we will discover that their common element of unification may be either subjective or objective. Furthermore, it will appear that in the general idea, symbolized by the word "obscene," there is only a subjective element of unification, which is common to all obscenity, and that herein it differs from most general terms. In the failure to recognize this fundamental unlikeness between different kinds of general ideas, we will discover the source of the popular error, that "obscenity" is a definite and definable, objective quality of literature and art.

A general idea (conception) is technically defined as "the cognition of a universal, as distinguished from the particulars which it unifies." Let us fix the meaning of this more clearly and firmly in our minds by an illustration.

A particular triangle may be right-angled, equilateral or irregular, and in the varieties of these kinds of triangles, there are an infinite number of shapes, varying according to the infinite differences in the length of their boundary lines, meeting in an infinite number of different angles.

What is the operation when we classify all this infinite variety of figures under the single generalization "triangle"? Simply this: In antithesis to those qualities in which triangles may be unlike, we contrast the qualities which are common to all triangles, and as to which all must be alike.

These elements of identity, common to an infinite variety of triangles, constitute the very essence and conclusive tests by which we determine whether or not a given figure is to be classified as a triangle. Some of these essential, constituent, unifying elements of every triangle are now matters of com-

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mon knowledge, while others become known only as we develop in the science of mathematics. A few of these essentials may be re-stated. A plain triangle must enclose a space with three straight lines; the sum of the interior angles formed by the meeting of these lines always equals two right angles; as one side of a plain triangle is to another, so is the sine of the angle opposite to the former to the sine of the angle opposite to the latter.

These, and half a dozen other mathematical properties belong to every particular triangle; and these characteristics, always alike in all triangles, are abstracted from all the infinite different shapes in which particular triangles appear; and these essential and constant qualities, thus abstracted, are generalized as one universal conception, which we symbolize by the word "triangle."

Here it is important to bear in mind that these universal, constituent, unifying elements, common to all triangles, are neither contributions, nor creations, of the human mind. They are the relations of the separate parts of every triangle to its other parts, and to the whole, and these uniform relations inhere in the very nature of things, and are of the very essence of the thing we call a "triangle."

As the force of gravity existed before humans had any knowledge of the law of its operation, so the unifying elements of all triangles exist in the nature of things, prior to and independent of our knowledge of them. It is because these unifying elements, which we thus generalize under the word "triangle," are facts of objective nature, existing wholly outside of ourselves, and independent of us, or of our knowledge of their existence, that the word "triangle" is accurately definable.

We will now analyze that other general term, "obscene," reducing it to its constituent, unchanging elements, and we will see that, in the nature of things, it must remain incapable of accurate, uniform definition, because, unlike the case of a triangle, the universal element in all that is "obscene" has no existence in the nature of things objective. It will then appear that, for the want of observing this difference between these two classes of general terms, judges and the mob alike, erroneously assumed that the "obscene," like the "triangle," must have an existence outside their own emotions, and, consequently, they were compelled to indulge in that mystifying verbiage, which the courts miscall "tests" of "obscenity."



First of all, we must discover what is the universal constituent, unifying element common to all obscenity. Let us begin with a little introspection, and the phenomena of our everyday life. We readily discover that what we deemed "indecent" at the age of sixteen, was not so considered at the age of five, and probably is viewed in still another aspect at the age of forty.

We look about us, and learn that an adolescent maid has her modesty shocked by that which will make no unpleasant impression upon her after maternity, and by that which would never shock a physician. We know, also, that many scenes are shocking to us if viewed in company, and not in the least offensive when privately viewed; and that, among different persons there is no uniformity in the added conditions which change such scenes to shocking ones.

We see the plain countyman shocked by the décolleté gowns of our well-bred society women; and she, in turn, would be shocked into insensibility if, especially in the presence of strange men, she were to view some pastoral scenes which make no shocking impressions upon her rustic critic. The peasant woman is most shocked by the "indecent" of the society woman's bare neck and shoulders, and the society woman is shocked most by the peasant woman's exhibition of bare feet and ankles, at least if they were brought into the city woman's parlor. We see that women, when ailment suggests its propriety, quite readily undergo an unlimited examination by a male physician, while with the sexes reversed, much greater difficulty would be experienced in securing submission. This not because men are *more* modest than women, but because other social conditions and education have made them *differently* modest.

It would seem to follow that the universal qualities which we collect under the general term "obscene," as its constituent, unifying elements are not inherent in the nature and relations of things viewed, as is the case with the triangle. Taking this as our cue, we may follow the lead into the realm of history, ethnology, sexual psychology and jurisprudence. By illustrative facts, drawn from each of these sources, it can be shown to a demonstration that the word "obscene" has not one single universal, constituent element in objective nature.

Not even the sexual element is common to all modesty, shame or indecency. A study of ethnology and psychology shows that emotions of disgust, and the concept of indecency

or obscenity, are often associated with phenomena having no natural connection with sex, and often in many people are not at all aroused by any phase of healthy sexual manifestation; and in still others it is aroused by some sensual associations and not by others; and these, again, vary with the individual according to his age, education and the degree of his sexual hyperaestheticism.

Everywhere we find those who are abnormally sex-sensitive and who, on that account, have sensual thoughts and feelings aroused by innumerable images, which would not thus affect the more healthy. These diseased ones soon develop very many unusual associations with, and stimulants for, their sex-thought. If they do not consider this a lamentable condition, they are apt to become boastful of their sensualism. If, on the other hand, they esteem lascivious thoughts and images as a mark of depravity, they seek to conceal their own shame by denouncing all those things which stimulate sensuality in themselves, and they naturally and erroneously believe that it must have the same effect upon all others. It is essential to their purpose of self-protection, that they make others believe that the foulness is in the offending book or picture, and not in their own thought. As a consequence, comes that persistence of reiteration, from which has developed the "obscene" superstition, and a rejection—even by Christians—of those scientific truths in the Bible, to the effect that "unto the pure all things are pure," etc. We need to get back to these, and reassert the old truth, that all genuine prudery is prurient.

The influence of education in shaping our notions of modesty is quite as apparent as is that of sexual hyperaesthesia. We see it, not only in the different effect produced upon different minds by the same stimulants, but also by the different effect produced upon the same person by different objects bearing precisely the same relation to the individual. When an object, even unrelated to sex, has acquired a sexual association in our minds, its sight will suggest the affiliated idea, and will fail to produce a like sensual thought in the minds of those not obsessed by the same association.

Thus, books on sexual psychology tell us of men who are so "pure" that they have their modesty shocked by seeing a woman's shoe displayed in a shop window; others have their modesty offended by hearing married people speak of retiring for the night; some have their modesty shocked by seeing in the store windows a dummy wearing a corset; some are

shocked by seeing underwear, or hearing it spoken of otherwise than as "unmentionables;" still others cannot bear the mention of "legs," and even speak of the "limbs" of a piano. Surely, we have all met those who are afflicted in some of these ways and others who are not.

Since the statutes do not define "obscene," no one accused under them has the least protection against a judge or jury afflicted with such diseased sex-sensitiveness, or against more healthy ones who, for want of information about sexual psychology, blindly accept the vehement dictates of the sexually hyperaesthetic as standards of purity. But whether a judge or a juror belongs to either of these classes, or rejects their dictum as to what is pure in literature, in any and every such event, he is not enforcing the letter of a general law, but enacting and enforcing a particular *ex post facto law* then enacted by him solely for the particular defendant on trial. What that law shall be in any case depends on the experiences, education and the degree of sex-sensitiveness of the court, and not upon any statutory specification of what is criminal.

Among the more normal persons, we see the same difference as to what is offensive to their modesty, depending altogether upon whether or not they are accustomed to the particular thing. That which, through frequent repetition, has become common-place no longer shocks us, but that which, though it has precisely the same relation to us or to the sensual, is still unusual, or is seen in an unusual setting, does shock us.

Some who are passive if you speak of a cow, are yet shocked if you call a bull by name. In the human species, you may properly use the terms "men" and "women," as differentiating between the sexes, but if you call a female dog by name, you give offense to many. So, likewise, you may speak of a mare to those who would take flight if you called the male horse by name. With like unreason, you may speak of an ox or a capon to everybody, of a gelding to very many, but of a eunuch only to comparatively few, without giving offense. No one thinks that nudity is immodest, either in nature or in art, except the nudity of the human animal; and a few are not opposed to human nudity in art, but find it immodest in nature.

The Agricultural Department of the United States distributes information on the best methods for breeding domestic animals, and sends those to jail who advocate the higher stirpiculture, for the sake of a better humanity.

Likewise, Prof. Andrew D. White tells us that: "At a time when eminent prelates of the Older Church were eulogizing debauched princes like Louis XV., and using the unspeakably obscene casuistry of the Jesuit Sanchez, in the education of the priesthood as to the relations of men and women, the modesty of the church authorities was so shocked by Linnaeus' proofs of a sexual system in plants, that for many years his writings were prohibited in the Papal States, and in various parts of Europe where clerical authority was strong enough to resist the new scientific current."

Now, education has so reversed public sentiment, that one may write with impunity about the sexuality of plants, which was formerly denounced as a "Satanic abyss:" but men have been, and would be, sent to jail for circulating in the English language the books of Sanchez and others like him. (Reg. vs. Hicklin, Law Rep. 3 Queen's Bench, 360.)

It thus appears that the only unifying element generalized in the word "obscene," (that is, the only thing common to every conception of obscenity and indecency), is subjective, is an affiliated emotion of disapproval. This emotion under varying circumstances of temperament and education in different persons, and in the same person in different stages of development is aroused by entirely different stimuli, and so has become associated with an infinite variety of ever-changing objectives, with not even one common characteristic in objective nature; that is, in literature or art.

This, then, is a demonstration that obscenity exists only in the minds and emotions of those who believe in it, and is not a quality of a book or picture. We must next outline the legal consequences of this fact of science. Since, then, the general conception "obscene" is devoid of every objective element of unification; and since the subjective element, the associated emotion, is indefinable from its very nature, and inconstant as to the character of the stimulus capable of arousing it, and variable and immeasurable as to its relative degrees of intensity, it follows that the "obscene" is incapable of accurate definition or general test, adequate to securing uniformity of result, in its application by every person, to each book of doubtful "purity."

Since few men have identical experiences, and fewer still evolve to an agreement in their ideational and emotional associations, it must follow that practically none have the same standards for judging the "obscene," even when their conclu-

sions agree. The word "obscene," like such words as delicate, ugly, lovable, hateful, etc., is an abstraction not based upon a reasoned, nor sense-perceived, likeness between objectives, but the selection or classification under it is made, on the basis of similarity in the emotions aroused, by an infinite variety of images; and every classification thus made, in turn, depends in each person upon his prior experience, education and the degree of neuro-sexual or psycho-sexual health. Because it is a matter wholly of emotions, it has come to be that "men think they know because they feel, and are firmly convinced because strongly agitated."

Being so essentially and inextricably involved with human emotions, no man can frame such a definition of the word "obscene" either in terms of the qualities of a book, nor such that, *by it alone*, any judgment whatever is possible, much less is it possible that by any such alleged "test" every other man must reach the same conclusion about the obscenity of every conceivable book. Therefore, the so-called judicial "tests" of obscenity are not standards of judgment, but, on the contrary, by every such "test" the rule of decision is itself uncertain, and in terms invokes the varying experiences of the testors within the foggy realm of problematical speculation about psychic tendencies, without the help of which the "test" itself is meaningless and useless. It follows that to each person the "test," which supposedly is a general standard of judgment, unavoidably becomes a personal and particular standard, differing in all persons according to those varying experiences which they read into the judicial "test." It is this which makes uncertain, and, therefore, all the more objectionable, all the present laws against obscenity.

This general argument can be given particular verification by a study of history, ethnology, general and sexual psychology, and judicial decisions, until we have produced demonstration amounting to a mathematical certainty that neither nature, common knowledge, science, nor the statute, has furnished, or can furnish, any tests by which to measure relative degrees of obscenity, or to fix the freezing point of modesty, as with a thermometer we measure relative heat and cold, or by chemical tests we determine the presence of arsenic.

If, then, neither nature, common knowledge, nor the statute, furnish so exact a definition of the "obscene" that, no matter by whom applied, it must uniformly and unerringly fix the same line of partition from that which is not "obscene,"

and if scientific research has furnished no tests by which, without speculative uncertainty, we may with mathematical accuracy classify every book or picture which, to the less enlightened, would seem to be on the borderland of doubtful "purity," then, it must follow that no general rule exists, applicable to all cases, and by which we can or do judge what is a violation of the statutory prohibition.

The so-called "tests," by which the courts direct juries to determine whether books belong to the "indecent and obscene," are a terrible indictment of the legislative and judicial intelligence, which could create and punish a mental crime, and determine guilt under it by such absurd "tests." Bereft of the magical, mystifying phrasing of moral sentimentalizing, the guilt of this psychological crime is always literally determined by a constructive (never actual), psychological (never material or demonstrable), potential and speculative (never a realized) injury, predicated upon the jury's guess, as to the problematical "immoral tendency" (not indicating the rules of which school of religious or scientific morality are to be applied) of an unpopular idea, upon a mere hypothetical (never a real) person. No! This is not a witticism, but a literal verity, a saddening, lamentable, appalling indictment of our criminal code as judicially interpreted.

Under a law of such vagueness and mystical uncertainty, be it said to our everlasting disgrace, several thousand persons in America have already been deprived of liberty and property; unnumbered others have been cowed into silence, who should have been encouraged to speak; and almost a score have been driven to suicide.

If, then, it is true that a book or a picture can only be classified as to its obscenity, not primarily according to the substance of that which it reveals, but according to the emotions thereby aroused, then, three conclusions irresistibly follow: First, there is no general test of obscenity capable of producing accuracy and uniformity of result in classifying books: second, for the want of such test, there never can be a conviction according to the letter of a uniform law, but every verdict expresses only a legislative discretion, wrongfully exercised after the act to be punished, and according to the peculiar and personal experiences of each judge or juror; and it is, therefore, but the enactment of a particular law, for the particular defendant then being tried, and applying to no one else. From these two follows the third, namely: That

no man, by reading the statute, can tell whether a particular book is criminal or not, because the criminality does not depend upon the statute, but upon the incompetent jurors' speculative opinion about the psychological tendency of the book.

It is inevitable, from such an indefinable statute, that the determination of what is "obscene" should become a matter of juridical arbitrariness, even though a clouded vision—as to the difference between judicial interpretation and judicial legislation—should induce all courts to deny the fact. However, some judges, with the *naivette* which evidences their consciousness of what they do, quite freely admit that it is not a matter of law, but a matter of discretion, which determines the character of a book, and, therefore, the "guilt" of its vendor.

One judge, after fumbling with those definitions of "obscene"—which define nothing—continued his instructions to the jury as follows: "These are as precise definitions as I can give. The case is one which addresses itself largely to your good judgment, common sense," etc. (38 Fed. R. 733.)

If "obscenity" means definable qualities of a book, how can guilt under this criminal law be made a matter of "good judgment," or a juror's conception of what is "common sense" upon the subject? The "good judgment" is for the legislature to exercise in passing the law, not for the jurors in determining its meaning, or its application.

In other cases jurors are instructed that: "If, in their judgment, the book was fit and proper for publication, and such as should go into their families, and be handed to their sons and daughters, and placed in boarding-schools, for the beneficial information of the young and others, then, it was their duty to acquit the defendant. . . . The jury were instructed that it did not matter whether the things published in the book were true and in conformity with nature or not." (Com. v. Landis 8 Phila. 453, and other cases.)

What is here plainly expressed is in every other case necessarily implied, because the statute has not created any general rule by which we can determine what is against the law. Every conviction is securable only by an exercise on the part of the jury of a legislative discretion, and not according to standards created by any general rule by which we can determine in advance what is and what is not prohibited, which can result in the suppression even of truth, and that discretion is personal to the jurors, and always this particular law of the

jury is enacted *ex post facto* at the trial of the accused, and not before, and is not, and cannot be, binding upon any other jurors. Since the legislative power cannot be delegated to a jury, and cannot be exercised *ex post facto*, even by the legislature itself, it follows that our present laws against "obscenity" must be a nullity, and will yet be so declared, when this argument, properly elaborated, shall be presented to an intelligent court.

Nearly two hundred years ago Montesquieu, in viewing the tyrannies about him, wrote this: "In despotic governments there are no laws, the judge himself is his own rule. . . . In republics, the very nature of the constitution requires the judges to follow the letter of the law. Otherwise the law might be explained to the prejudice of every citizen in cases where their honor, property or life is concerned." (Spirit of Laws, p. 81.)

Within the domain of literature, we have unintentionally, through psychologic ignorance, re-established that irresponsible, arbitrary absolutism of the judiciary, which it took many ages of painful struggle to abolish. Shall it remain and be extended, or will we throttle this new despotism? Of jurisprudence it is said: "Its value depends on a fixed and uniform rule of action." From what has preceded, it follows that the statutes here in question are uncertain beyond all possibility of being made uniform guides for our conduct. As has been shown, this uncertainty never arises from any doubt as to the contents of the book to be judged, but the uncertainty always arises solely from the indefinable nature of that which the statute attempts to penalize.

It follows that convictions can be had only as antipathy or affection, caprice or whim, on the part of the jurors, dictates the result of their deliberations. For each, the foundation of his judgment of guilt is his personal experience, necessarily differing from the experience of other jurors, who, therefore, have other standards of judgment. It is no credit to the intelligence of the bar, that these matters have never been argued to any court. When adequately presented to an intelligent judge, with psychologic insight and an open mind, all present obscenity legislation will disappear. To that end, such a judge will do his plain duty by applying the old legal maxim: "Where the law is uncertain there is no law."

The short space remaining will be devoted to one of the many illustrations, which in this class of cases exhibit the



colossal stupidity of judicial tribunals in "this enlightened age." The courts of America, with great uniformity, have followed the early English decisions in their attempts to define obscenity. Here is the judicial formula: "The statute uses the word 'lewd,' which means, having a tendency to excite lustful thoughts. . . . The test of obscenity is this—whether the tendency of the matter, charged as obscene, is to deprave and corrupt *those whose minds are open to such immoral influences* and into whose hands a publication of this sort may fall."

Here, we can take space to analyze but one of the numerous absurdities involved in this "test of obscenity." We will limit ourselves to the phrase "those whose minds are open to such immoral influences." This, of course, includes those who, through long sex-suppression or disease, are afflicted with the most acute sexual-hyeraesthesia.

Kraft-Ebing, among many biographies of sexual psychopaths, gives one from which I will quote only a single paragraph. The patient says: "The thought of slavery had something exciting in it for me, and alike whether from the standpoint of master or servant. That one man could possess, sell or whip another, caused me intense excitement; and in reading 'Uncle Tom's Cabin' (which I read at about the beginning of puberty) I had an —r—ct—n." (Psychopathia Sexualis, p. 105, from the translation of the 7th German edition.)

The explanation is not difficult. The stirring scenes depicted in "Uncle Tom's Cabin" produced a very intense general excitement, which, by its irritation of the—possibly abnormally sensitive—sex-nerve-centers, produced sexual excitement.

A jury of experts, knowing this and kindred facts, and applying the test of obscenity and lewdness prescribed in practically all the English and American decisions, must conclude that "Uncle Tom's Cabin" is an obscene and lewd book, within the statute. Only a jury very ignorant of the effect of such a book on "those whose minds are open to such immoral influences," could render a verdict of "not guilty," if trying a person charged with the "indecent crime" of sending "Uncle Tom's Cabin" through the mails.

But the courts who promulgated such stupidity as a "test" of obscenity, tell us that this is "within the range of ordinary

intelligence." Yes, so *extraordinary* that my vocabulary is inadequate for the occasion, and, therefore, I close.

THEODORE SCHROEDER.

CONCURRING OPINIONS.

"In the scientific study of the absurd judicial "tests" of obscenity Theodore Schroeder of New York City takes a leading step in advance, and no doubt great good will come from such efforts."—*The Medical Herald*, for Nov., 1906.

"It is impossible to define what is an immoral or obscene "publication. To say that it necessarily tends to corrupt or "deprave the morals of readers, supplies no definite test."—*Paterson's Liberty of the Press Speech and Public Worship*, p. 70. London, 1880.

"We have been taught to believe that it was the greatest injustice toward the common people of old Rome when the laws they were commanded to obey, under Caligula, were written in small characters, and hung upon high pillars, thus more effectually to ensnare the people. How much advantage may we justly claim over the old Romans, if our criminal laws are so obscurely written that one cannot tell when he is violating them? If the rule contended for here is to be applied to the defendant, he will be put upon trial for an act which he could not by perusing the law have ascertained was an offence. My own sense of justice revolts at the idea. It is not in keeping with the genius of our institutions, and I cannot give it my sanction. \* \* \* The indictment is quashed, and the defendant is discharged." Judge Turner, on a trial for depositing an obscene sealed letter in the Post Office. *Dist. Court West Dist. of Texas. U. S. vs. Commersford 25 Fed. Rep. 904.*

MR. COMSTOCK AS A PSYCHOLOGIST.

Mr. Anthony Comstock, after nearly a year's meditation, made the following very luminous and highly scientific criticism of my foregoing arguments: "It is all right from the mere standpoint of debate and discussion, to theorize and say that there is no such thing as an obscene book or picture. The man who says it simply proclaims himself either an ignoramus, or is so ethereal that there is no suitable place on earth for him."—*The Light*, January, 1907.

If Mr. Comstock himself is not an ignoramus, and is intellectually honest, why doesn't he comply with repeated requests and opportunity, by pointing out the errors of fact or logic, upon which I base my conclusion that obscenity exists only in the viewing mind,—in his mind—and not in the books?

LIBERTY OF DISCUSSION DEFENDED WITH SPECIAL APPLICATION TO SEX-DISCUSSION.

BY THEODORE SCHROEDER.

Re-published from *Liberal Review* for Aug. and Sept., 1906.

The desire to persecute, even for mere opinion's sake, seems to be an eternal inheritance of humans. We naturally and as a matter of course encourage others in doing and believing whatever for any reason, or without reason, we deem proper. Even though we have a mind fairly well disciplined in the duty of toleration, we quite naturally discourage others, and feel a sense of outraged propriety, whenever they believe and act in a manner radically different from ourselves. Our resentment becomes vehement just in proportion as our reason is impotent, and our nerves diseasedly sensitive. That is why it is said that "Man is naturally, instinctively intolerant and a "persecutor."

From this necessity of our undisciplined nature comes the stealthy but inevitable recurrence of legalized bigotry, and its rehabilitation of successive inquisitions. From the days of pagan antiquity to the present hour, there has never been a time or country wherein mankind could claim immunity from all persecution for intellectual differences. This cruel intolerance has always appealed to a "sacred and patriotic duty," and masked behind an ignorantly made and unwarranted pretense of "morality."

"Persecution has not been the outgrowth of any one age, "nationality or creed; it has been the ill-favored progeny of "all." Thus, under the disguise of new names and new pretensions, again and again we punish unpopular, though wholly self-regarding, non-moral conduct; imprison men for expressing honest intellectual differences; deny the duty of toleration;

destroy a proper liberty of thought and conduct; and always under the same old false pretenses of "morality," and "law and order."

Whenever our natural tendency toward intolerance is reinforced by abnormally intense feelings, such as diseased nerves produce, persecution follows quite unavoidably, because the intensity of associated emotions is transformed into a conviction of inerrancy. Such a victim of diseased emotions, even more than others, "knows because he feels, and is firmly convinced because strongly agitated." Unable to answer logically the contention of his friend, he ends by desiring to punish him as his enemy. Because of the close interdependence of the emotional and the generative mechanism, it is probable that unreasoned moral sentimentalizing inducing superstitious opinions about the relation of men and women will be the last superstition to disappear.

The concurrence of many in like emotions associated with and centered upon the same focus of irritation, makes the effective majority of the state view the toleration of intellectual opponents as a crime, and their heresy, whether political, religious, ethical or sexual, is denounced as a danger to civil order, and the heretic must be judicially silenced. Thus all bigots have reasoned in all past ages. Thus do those afflicted with our present sex superstition again defend their moral censorship of literature and art.

These are the processes by which we always become incapable of deriving profit from the lessons of history. That all the greatest minds of every age believed in something now known to be false, and in the utility of what is now deemed injurious or immoral, never suggests to petty intellects that the future generations will also pity us for having entertained our most cherished opinions.

The presence of these designated natural defects, which so very few have outgrown, makes it quite probable that the battle for intellectual freedom will never reach an end. The few, trained in the duty of toleration, owe it to humanity to re-state, with great frequency, the arguments for mental hospitality. Only by this process can we contribute directly toward the mental discipline of the relatively unevolved masses, and prepare the way for those new and therefore unpopular truths by which the race will progress. The absolute liberty of thought, with opportunity, unlimited as between adults, for

its oral or printed expression is a condition precedent to the highest development of our progressive morality.

Men of strong passions and weak intellects seldom see the expediency of encouraging others to disagree. Thence came all of those terrible persecutions for heresy, witchcraft, sedition, etc., which have prolonged the midnight of superstition into "dark ages." The passionate zeal of a masterful few has always made them assume that they only could be trusted to have a personal judgment upon moral questions, while all others must be coerced, unquestioningly, to accept them upon authority, "with pious awe and trembling solicitude."

Such egomania always resulted in the persecution of those who furnished the common people with the materials upon which they might base a different opinion, or outgrow their slave-virtues.

One of Queen Mary's first acts was an inhibition against reading or teaching the Bible in churches, and against printing books. In 1530, the king pursuant to a memorial of the House of Commons, issued a proclamation requiring every person "which hath a New Testament or the Old, translated into "English or any other boke of Holy Scripture, so translated, "beinge in printe," to surrender them within fifteen days, "as "he will avoyde the Kynge's high indignation and displeasure," which meant death.

Another and similar proclamation was issued, covering the New Testament and writings of many theologians. The act passed in the 3rd and 4th Edward VI., repeated this folly. So thousands of Bibles were burned under the personal supervision and benediction of priests and bishops, because of the immoral tendency toward private judgment involved in reading the "Divine Record."\*

Poor William Tyndale, who took the infinite trouble of translating the scriptures into English, found that, "his New Testament was forthwith burnt in London;" and he himself, after some years, was strangled and burnt at Antwerp. (1536 †)

So now we have many who likewise esteem it to be of immoral tendency, for others than themselves to secure such

\*Vickers' *Martyrdom of Literature*, pp. 190, 225 to 227. See also Paterson's *Liberty of the Press*, p. 50.

†Books Condemned to be Burnt, page 9.

information as may lead to a personal and different opinion about the physiology, psychology, hygiene, or ethics of sex, and by law we make it a crime to distribute any specific and detailed information upon these subjects, especially if it be unprudish in its verbiage or advocates unorthodox opinions about marriage or sexual ethics. This is repeating the old folly that the adult masses cannot be trusted to form an opinion of their

The "free" people of the United States cannot be allowed to have the information which might lead to a change of their own statute laws upon sex.

There will always be those thoughtless enough to believe that truth may be properly suppressed for considerations of expediency. I prefer to believe with Professor Max Muller, that "The truth is always safe, and nothing else is safe;" and with Drummond that "He that will not reason, is a bigot; he that cannot reason, is a fool, and he that dares not reason, is a slave;" and with Thomas Jefferson when in his inaugural address he wrote, "Error of opinion may be tolerated, when reason is left free to combat it;" and I believe these are still truisms even though the subject is sex.

We have only to go back a few centuries to find an influential clique of pious men trying to maintain a monopoly of "truth." Those who disputed their affirmations whether about geology or theology, were promptly beheaded or burnt. The clerical monopolists denied common people the right, not only of having an independent judgment as to the significance, or value, or truth of "holy writ," but even denied them the right to read the book itself, because it would tempt them to independent judgment, which might be erroneous, and thus make them "immoral."

The contents and the interpretation of the Bible, together with the political tyranny founded on these, must, "with humble prostration of intellect," be unquestioningly accepted. Those who disputed the self-constituted mouthpieces of God were promptly killed. And now, those who, without "humble prostration of intellect," dispute any of the ready-made ignorance on the physiology, hygiene and psychology or ethics of sex, are promptly sent to jail. Yet we call this a "free" country, and our age a "civilized" one.

By the same appeal to a misguided expediency, we find that only a few years ago it was a crime to teach a negro slave how to read or write. Education would make him doubt

his slave-virtues, and with a consciousness of the injustice being inflicted upon him, he might disturb the public order to secure redress. So, imparting education became immoral, and was made a crime. An effort was made to make it a crime to send anti-slavery literature through the mails because of its immoral tendency, and southern postmasters often destroyed it without warrant of law, before delivery to those to whom it was addressed.

Within the past century, married women had no rights which their husbands need respect, and education to women was made impossible, though the imparting of it was not penalized. Now they may acquire an education about everything, except what ought to be the most important to them, namely: a scientific knowledge of the ethics, physiology, hygiene, and psychology of sex. To furnish them with literature of the highest scientific order, even though true and distributed from good motives, or in print to argue for their "natural right and necessity for sexual self-government," is now a crime, and we call it "obscenity" and "indecenty."

Formerly, when bigots were rampant and openly dominant; the old superstition punished the psychological crime of "immoral thinking," because it was irreligious, and it was called "sedition," "blasphemy," etc. Under the present verbal disguise, the same old superstition punishes the psychological crime of immoral thinking, because it may discredit the ethical claims of religious asceticism, and now we call it "obscenity" and "indecenty." What is the difference between the old and the new superstition and persecution?

Strange to say, there are hundreds of thousands of the unchurched, who, for want of clear mental vision or adequate moral courage, are fostering the suppression of unconventional thinking, and justify it, upon considerations of expediency.

The argument against the expediency of truth is ever the last refuge of retreating error, a weak subterfuge to conceal a dawning consciousness of ignorance. In all history, one cannot find a single instance in which an enlargement of opportunity for the propagation of unpopular allegations of truth has not resulted in increased good.

"If I were asked, 'What opinion, from the commencement of history to the present hour, had been productive of the most injury to mankind?' I should answer, without hesitation: 'The inexpediency of publishing sentiments of supposed

“bad tendency.” It is this infamous opinion which has made the world a vale of tears, and drenched it with the blood of martyrs.

I am fully mindful of the fact that an unrestricted press means that some abuse of the freedom of the press will result. However, I also remember that no man can tell *a priori* what opinion is of immoral tendency. I am furthermore mindful that we cannot argue against the use of a thing, from the possibility of its abuse, since this objection can be urged against every good thing, and I am not willing to destroy all that makes life pleasant. Lord Littleton aptly said: “To argue against any breach of liberty, from the ill use that may be made of it, is to argue against liberty itself, since all is capable of being abused.”

Everyone who believes in the relative and progressive morality of scientific ethics, must logically believe in the immorality of a code which preaches absolutism in morals upon the authority of inspired texts, instead of deriving moral precepts from natural, physical law. But that is no warrant for the scientific moralist suppressing the teaching of religious morality, as inexpedient, even if he believed it to be so and had the power. Neither can the religious moralist justify himself in the suppression of the opinions of his scientific opponents. It is alone by comparison and contrast, that each perfects his own system, and in the end all are better off for having permitted the disputation.

No argument for the suppression of “obscene” literature has ever been offered which, by unavoidable implication, will not justify, and which has not already justified, every other limitation that has ever been put upon mental freedom. No argument was ever made to justify intolerance, whether political, theological, or scientific, which has not been restated in support of our present sex superstitions and made to do duty toward the suppressing of information as to the physiology, psychology, or ethics of sex. All this class of arguments that have ever been made, have always started with the false assumption that such qualities as morality or immorality could belong to opinions, or to a static fact.

Because violence is deemed necessary to prevent a change, or the acquisition of an opinion concerning the hygiene, physiology or ethics of sex, we must infer that those who defend the press censorship are unconsciously claiming om-



niscient infallibility for the present sexual intelligence. If their sex opinions were a product of mere fallible reason, they would not feel the desirability, the need or duty to suppress rational criticism. By denying others the right of publishing either confirmation or criticism, they admit that their present opinions are a matter of superstition and indefensible as a matter of reason. To support a sex superstition by law is just as reprehensible as, in the past, it was to support the, now partially exploded, governmental, scientific and theological superstitions, by the same process. This, be it remembered, was always done in the name of "morality," "law and order," etc.

There may still be those, who argue that the persecutors of Christians were right, because the persecution of an advocate is a necessary ordeal through which his truth always passes successfully; legal penalties, in the end, being powerless against the truth, though sometimes beneficially effective against mischievous error.

It may be a historical fact that all known truths, for a time, have been crushed by the bigot's heel, but this should not make us applaud his iniquity. It is an aphorism of unbalanced optimists, that truth crushed to earth will always rise. Even if this were true, it must always remain an unprovable proposition, because it postulates that at every particular moment we are ignorant of all those suppressed truths, not then resurrected, and since we do not know them, we cannot prove that they ever will be resurrected. It would be interesting to know how one could prove that an unknown truth of past suppression is going to be rediscovered, or that the conditions which alone once made it a cognizable fact will ever again come into being. And yet a knowledge of it might have a very important bearing on some present controversy of moment.

Surely, many dogmas have been wholly suppressed which were once just as earnestly believed to be as infallibly true as some that are now accepted as inspired writ. Just a little more strenuousness in persecution would have wiped out all Christians, if not Christianity itself. How can we prove that all the suppressed, and now unknown, dogmas were false? If mere survival after persecution is deemed evidence of the inerrancy of an opinion, then which of the many conflicting opinions, each a survivor of persecution, are unquestionably true,

and how is the choice to be made from the mass? Is it not clear that neither a rediscovery, nor a survival after persecution, can have any special relation to truth as such? If it is, then let us unite to denounce as an unprovable hallucination the statement that truth crushed to earth will rise again.

The abettors of persecution are more damaged than those whom they deter from expressing and defending unpopular opinions, since as between these, only the former are depriving themselves of the chief means of correcting their own errors. But the great mass of people belong neither to the intellectual innovators, nor to their persecutors. The great multitude might be quite willing to listen to or read unconventional thoughts if ever permitted, amid opportunity, to exercise an uncoerced choice.

Much of the justification for intolerance derives its authority from false analogies, wrongfully carried over from physical relations into the realm of the psychic.

Thus some argue that because, by laws, we protect the incompetent against being (unconsciously) infected with contagious disease, therefore the state should also protect them (even though mature and able to protect themselves by mere inattention) against the literature of infectious moral poison. Here a figure of speech is mistaken for an analogy. "Moral poison" exists only figuratively and not literally in any such sense as strychnine is a poison.

Ethics is not one of the exact sciences. Probably it never will be. Until we are at least approximately as certain of the existence and tests of "moral poison," as we are of the physical characteristics and consequences of carbolic acid, it is folly to talk of "moral poison" except as a matter of poetic license.

In the realm of morals no age has ever shown an agreement, even amongst its wisest and best men, either as to what is morally poisonous, or by what test it is to be judged as morally deadly. Moral concepts are a matter of geography and evolution. The morality of one country or age is viewed as the moral poison of another country or age. The defended morality of one social or business circle is deemed the immorality of another. The ideals which attach to one man's God, are those of another man's devil. Furthermore, our best scientific thinkers concur in the belief that all morality is relative and progressive, whereas numerous other men deem a part or all of our conduct to be *per se* moral or immoral.

Some deem the source of authority in matters of morals to be God, as his will is manifested through the revelations or prophets of his particular church, or that interpretation of them, which some particular branch of some particular church promulgates. Others find morality only in the most health-giving adjustment to natural law, and still others find their authority in a conscience, unburdened, either with supernatural light, or worldly wisdom. Only the generous exercise of the most free discussion can help us out of this chaos.

Philosophers tell us that life is "the continuous adjustment "of internal relations to external relations." The use of conscious effort toward the achievement of the fullest life, through our most harmonious conformity to natural laws, is the essential distinction between the human and other animals.

Observance of natural law is the unavoidable condition of all life, and a knowledge of those laws is a condition precedent to all effort for securing well-being, through conscious adjustment to them. It follows that an opportunity for an acquaintance with nature's processes, unlimited by human coercion, is the equal and inalienable right of every human being, because essential to his life, liberty, and pursuit of happiness. No exception can be made for the law of our sex nature.

It also follows that in formulating our conception of what is the law of nature, and in its adjustment or application by us to our infinitely varied personal constitutions, each sane adult human is the sovereign of his own destiny and never properly within the control of any other person, until some one, not an undeceived voluntary participant is directly affected thereby to his injury.

The laws for the suppression of "obscene" literature as administered, deny to adults the access to part of the alleged facts and arguments concerning our sex nature, and therefore are a violation of the above rules of right and conduct.

We all believe in intellectual and moral progress. Therefore, whatever may be the character or subject of a man's opinions, others have the right to express their judgments upon them; to censure them, if deemed censurable; or turn them to ridicule, if deemed ridiculous. If such right is not protected by law, we should have no security against the exposition or perpetuity of error, and therefore we should hamper progress.

It follows that the believer in a personal God or in the

Trinity, the Mormon with his "Adam-God," the Agnostic with his "Unknowable," the Christian-scientist with his impersonal "All mind and all love" God, the Unitarian with his "Purposeful Divine Imminence," the Theosophist with his godless "Nirvana," and the Atheist, all have an equal right to vie with each other for public favor; and, incidentally, to censure or ridicule any crudities which they may believe they see in any or all rival conceptions.

It is only by recognition and exercise of such a liberty that humanity has evolved from the primal sex-worship through the innumerable phases of nature worship to our present relatively exalted religious opinion. Even though we reject all, or all but one, of the numerous modern anthropomorphic and deistic conceptions of God, we must still admit that each of these is based upon a more enlightened and enlarged conception of the Universe and man's relation to it, than can possibly be implied in the worship of the phallus. Thus liberty of thought and of its expression has been and will continue to be the one indispensable condition to the improvement of religions.

If we are not thus far agreed as to the equal moral rights of each, then which one has less right than the rest? It is beyond question that the solitary man has an unlimited right of expressing his opinion, since there is no one to deny him the right. With the advent of the second man surely he still has the same right with the consent of that second man. How many more persons must join the community before they acquire the moral warrant for denying the second man the right and the opportunity to listen to, or to read, anything the other may speak or write, even though the subject be theology or sex-morality? By what impersonal standard (not one based merely upon individual preferences) shall we adjudge the forfeiture of such individual rights, if forfeiture is to be enforced by a limitation?

If such impersonal standard cannot be furnished then the argument must proceed as follows: if all disputants have the equal right to question and deride the conceptions of all the rest as to the existence, nature or knowableness of their respective God, then they have an equal right to question the divine origin or interpretation of that which others believe to be divine revelation.

If men have a right to cast doubt upon the source and

fact of divine revelation, then, of course, they must have an equal right to discredit that which others believe to have been taught by such divine revelation, even though the subject be the relation of the sexes.

More specifically, that means this: the Catholic priest may advocate, as others deny, the superior morality of his celibacy; the one may argue for, and the other against, the compatibility of the best health and life-long continence, and to this end either may adduce all the evidence, historical or scientific, which is deemed material; the marriage purists may argue for, and others against, the superior morality of having sexual relation only for the purpose of procreation; the Bible Communist of Oneida may advocate, as others deny, the superior morality of "free love;" the Episcopalians and Ethical Culturists; may advocate, as others deny, the superior morality of indissoluble monogamy; the Agnostic or Liberal Religionist may advocate, and others may deny, the superior morality of easy divorce; the Utilitarian may advocate, as others deny, the superior morality of stirpiculture with or without monogamic marriage; the Mormon may advocate, as others deny, the superior morality of polygamy, etc., etc.

I assume for the present that they do not advocate the violation of existing marriage laws, but limit their demand and argument to a repeal or amendment of those laws, so as to make them conformable to their respective ideals. Under present laws numerous persons have been arrested for making arguments in favor of some of the foregoing propositions, while advocates of the contrary view have gone on unmolested.

Those who hold to any one of these ideals necessarily believe all others to be of immoral tendency; and it seems to me that ridicule, fact and argument, unrestricted as to adults, are the only means by which the race can secure that progressive clarification of moral vision, which is essential to higher moral development.

The vaunted morality of one age is the despised superstition and barbarism of succeeding ages. Thus we have proceeded, as far as our sexual morality is concerned, through irresponsible, indiscriminate promiscuity, group marriage, female slavery, the sacred debauchery of sex-worship, polyandry, polygamy, the abhorrent ideals of ascetics and sex-perverts, to our present standards, and the course of moral evolution is not yet ended.

Since, then, the very superiority of our present morality is due to the liberty of thinking and of exchanging thoughts, how absurd and outrageous it is now to impair or destroy the very basis upon which it rests, and upon which must depend the further development of our progressive morality.

Since advancement in the refining of our ethical conceptions is conditioned upon experimentation and the dissemination of its observed results, it follows that the most immoral of present tendencies is that which arrests moral progress by limiting the freedom of speech and press. When viewed in long perspective it also follows that we must conclude that the most immoral persons of our time are those who are now successfully stifling discussion, and restricting the spread of sexual intelligence, because they are most responsible for impeding moral progress, as to the relations of men and women.

Those who in these particulars deny a freedom of speech and press and the correlative right to hear, unlimited as to all sane adults, by their very act of denial, exercise a right which they would suppress in others. The true believer in equality of liberty allows others the right to speak against free speech, though he may not be so hospitable as to its actual suppression. No man is truly liberal who is unwilling to defend the right of others to disagree with him, even about free-love, polygamy, or stirpiculture.

If our conceptions of sexual morality have a rational foundation, then they are capable of adequate rational defence, and there is no need for legislative suppression of discussion. If our sex ethics will not bear critical scrutiny and discussion then to suppress such discussion is infamous, because it is a legalized support of error. In either case the freest possible discussion is a necessary condition of the progressive elimination of error.

No man can help believing that which he believes. Belief is not a matter of volition. No man, by an act of will, can make himself believe that twice two are six. He may say it, but he cannot believe it, that is, he cannot acquire the corresponding concept. No man, solely by an act of will, can stop thinking. No man can tell what he will think tomorrow, nor arbitrarily determine what he will think next year.

If there still remain any believers in the free-will superstition, as applied to matters of belief, each of them can, by

a simple test, demonstrate to himself the impossibility of arbitrarily controlling his conviction. Let him, solely by an uncaused exercise of his "free-will," abolish his belief in its existence, and substitute the conviction that a man in his mental life is a mere irresponsible automaton. Then, having firmly held this latter conviction for just ten days, let him, by another act of the "free-will" (which then, he does not believe in), restore his belief in its existence. Not until I find a sane man who honestly believes that he has performed this, to me impossible feat, can I admit that the existence of a "free-will" as applied to our thought-products, is even a debatable question.

"Free will" in the determination of one's opinion is but a special phase of the general "free-will" doctrine. Those who, in spite of the foregoing suggestions, continue to believe in the lawlessness of the intellect and their own ability to believe doctrines without evidence or against what to themselves seems a preponderance of the evidence, must be referred to the scientific literature upon the subject.\*

Professor Fiske, in his *Cosmic Philosophy*, fully considers and answers all the arguments for a "lawlessness of volition" and concludes his discussion with these paragraphs:

"From whatever scientific standpoint we contemplate the "doctrine of lawlessness of volition, we find that its plausibility depends solely on tricks of language. The first trick is the personification of will as an entity distinct from all acts of volition; the second trick is the ascription to this entity of 'freedom,' a word which is meaningless as applied to the process whereby feeling initiates action; the third trick is the assumption that desires or motives are entities outside of a person, so that if his acts of volition were influenced by them he would be robbed of his freedom.

"Whatever may be our official theories, we all practically ignore and discredit the doctrine that volition is lawless. Whatever voice of tradition we may be in the habit of echoing, we do equally, from the earliest to the latest day of our self-conscious existence, act and calculate upon the supposi-

\*Maudsley, "Body and Mind," Part I; Herbert Spencer, "Principles of Psychology," Vol. I, pp. 495 to 613; Ribot, "Diseases of the Will"; John Fiske, "Cosmic Philosophy," Vol. II, chap. 17.

“tion that volition, alike in ourselves and in others, follows  
“invariably the strongest motive.

“Finally, in turning our attention to history, we have found  
“that the aggregate of thoughts, desires and volitions in any  
“epoch is so manifestly dependent upon the aggregate of  
“thoughts, desires and volitions in the preceding epoch, that  
“even the assertors of the lawlessness of volition are forced to  
“commit logical suicide by recognizing the sequence. Thus,  
“whether we contemplate volitions themselves, or compare  
“their effects, whether we resort to the testimony of psychology  
“or to the testimony of history, we are equally compelled to  
“admit that law is co-extensive with all orders of phenomena  
“and with every species of change.

“It is hardly creditable to the character of the present  
“age or scientific enlightenment that such a statement should  
“need to be made, or that twenty-six pages of critical argument  
“should be required to illustrate it.

“To many, this chapter will no doubt seem an elaborate  
“attempt to prove the multiplication table. Nevertheless, where  
“such blinding metaphysical dust has been raised, a few drops  
“of the cold water of common sense may be not only harmless  
“but useful.”

Since our beliefs are not a matter of uncaused choice,  
but an unavoidable consequence, man cannot properly be held  
morally responsible for what he believes. Moral responsibility  
or guilt cannot attach itself to our thoughts, and no man  
should be punished for holding or expressing unpopular or  
unconventional or miscalled “immoral” opinions, at least until  
it is shown that actual material and direct injury has resulted  
to some one, not an adult who invited the damage or was him-  
self an immediate participating cause.

An abstract opinion, or its verbal expression, cannot be  
either moral or immoral, though conduct based thereon may  
be. Those who advocate a moral censorship of literature are  
confounding the consequences of opinion with those of con-  
duct. The evil consequences of the latter flow from the acts  
alone, while opinions in themselves can have no evil con-  
sequences. To produce such the published opinion must first  
be assimilated by the receiving mind, and then transformed  
into injurious non-selfregarding action. Therefore it is the  
conduct and never directly the opinion which is immoral.

Some who justify intolerance admit this, and think they



evade its consequences by saying that they believe in punishing difference of opinion, only in its expression, which is acting, not thinking. "Thinking is free", they say, "but speech is so only by tolerance, not as a matter of right. No man may injure us by his speech, any more than with his club. The spoken or printed word may be an act as guilty, "as inexcusable and as painful as a knife-thrust." This is all true, but rightly interpreted, is no answer to the doctrine of the freedom of speech, rightly understood.

Save in palliating exceptions, well recognized in the law of libel and slander, you may not talk *about* one person to another, so as wantonly to injure the former in his good name, credit, property, etc. This, however, cannot be made to justify the proposition that you may not, with the consent of the listeners or readers, express to them any speculative conviction, upon any subject, even sex, which is not directly invasive of anyone's rights or equality of liberty. That speech is free only by tolerance is also an acceptable maxim, if we understand the tolerance of the sane adult listener, or reader, and not the tolerance of others. No one should, or can, be compelled to read anything or to assimilate what he reads. Consequently nobody needs the help of the state to protect him against compulsory intellectual exercise.

The right of expression of opinion is inseparable from the right to hear and weigh arguments. The state can have no property right in the unchangeableness of anyone's opinions, even about sexual ethics, such as to warrant it in prohibiting him from altering such opinions. If the state has no right to prohibit a change of view, it has no moral right to compel attendance at church or elsewhere, for the purpose of unifying thought, nor to prohibit anyone from supplying the facts and arguments which may be the means of producing a changed view. This conclusion is not to be altered according to whether the ideas are woven into poetry, fiction, painting, music or science. No one can compel another to read; no one can rightfully deny him the privilege of reading, or another, the opportunity of preparing or furnishing him the reading matter upon request; none but an insufferable tyrant would attempt such a thing, even upon the subject of sex. To deny one the right to come into possession of part of the evidence is just as objectionable as to compel attendance where only the rest of the evidence will be related.

A change of opinion, through added knowledge and its rational assimilation, only means intellectual development which can seldom injure anyone. But if injury shall ever come to us by our acquisition of new facts, or the achievement of new opinions, then, unlike the injury of another's knife-thrust it comes only by our active co-operation toward the accomplishment of that injury.

Usually the "injury," resulting directly from an acceptance of unpopular beliefs, exists only in the imagination of those holding contrary opinions, and they should never be entrusted with the always dangerous power of forcing upon sane adults, against their protest, any unappreciated and undesired, ready-made, intellectual blessing. Of necessity, minorities must have the same right and opportunity to express their opinions and to try to secure the majority endorsement, as the majority have to express contrary ones. To deny this is to destroy all possibility for intellectual advancement, since new truths are at first revealed only to the few, and these innovators, and their advanced ideas, are invariably denounced by the stupidity of an unreasoning conservatism. This is just as true about the hygiene, physiology, psychology and ethics of sex, as about anything else. In support of this contention for a liberty of speech and press regardless of dreaded hypothetical consequences, we may well quote the unanswerable logic of Professor Cooper. He wrote:

"Indeed, no opinion or doctrine, of whatever nature it be, "or whatever be its tendency, ought to be suppressed. For it "is either manifestly true or it is manifestly false, or its truth "or falsehood is dubious. Its tendency is manifestly good, or "manifestly bad, or it is dubious and concealed. There are no "other assignable conditions, no other functions of the problem.

"In the case of its being manifestly true and of good tendency there can be no dispute. Nor in the case of its being "manifestly otherwise; for by the terms it can mislead nobody. "If its truth or its tendency be dubious, it is clear that nothing "can bring the good to light, or expose the evil, but full and "free discussion. Until this takes place, a plausible fallacy may "do harm; but discussion is sure to elicit the truth and fix public "opinion on a proper basis; and nothing else can do it."

Again, quoting from Vol. 6 of Westminster Review:

"It is obvious there is no certain and universal rule for determining, *a priori*, whether an opinion be useful or pernicious."

“cious, and that if any person be authorized to decide, unfettered by such a rule, that person is a despot. To decide what opinions shall be permitted and what prohibited, is to choose opinions for the people; since they cannot adopt opinions which are not suffered to be presented to their minds. Whoever chooses opinions for the people possesses absolute control over their actions, and may wield them for his own purposes with perfect security, and for evil as well as for good unless infallible.”

If there exists an opinion, the truth or falsity of which is unanimously conceded to be of no consequence to humanity, either for good or evil, then no excuse can be given for suppressing it, and indeed, no one would be interested to prohibit its discussion or to discuss it. If the truth of an opinion is by any deemed to be of consequence to humanity, then there exist only reasons for encouraging the greatest freedom of discussion and experimentation, since these are the only avenues to the correction of any opinions, even upon the subject of sexual physiology, psychology, hygiene, or ethics.

So long as there is, among sane adults, difference of opinion about anything, our race has not as to that subject matter attained to certain knowledge, and only freedom in the interchange of opinion and experimentation can help us onward. When our knowledge of sex, religion, etc., has been established to a mathematical certainty there will be no difference of opinion, and to suppress or abridge discussion upon these subjects before we have reached mathematical certainty for our conclusions, is an outrage because it is the most effective bar to our attainment of such certitude.

But it is said, this justifies the spread of “dangerous” opinions. Yes, it does. It is time enough to punish dangerous opinions when the “danger” has ceased to be merely speculative and hypothetical; that is when it is shown to have actually resulted in the violent or fraudulent invasion of nature’s rule of justice.

If the advocate of a “dangerous” opinion has not himself been induced by it to commit an unjust interference with the largest equal liberty of others, it is *improbable* that it will induce his hearers or readers to become invaders. If the opinion is dangerous in those who might hear or read it, it is presumably equally dangerous in the mind of him who would express it verbally, if permitted. If we are warranted in

excluding the opinion from the minds of others because it tends towards "dangerous" acts, then we are also warranted in making such dangerous acts impossible to those who already entertain such "dangerous" opinions. Furthermore, we cannot then be logically compelled to await the realization of that danger from those already convinced, any more than from those about to be convinced. Such premises bring us unavoidably to the result that society would be justified in engaging in inquisitions for the discovery of every man's opinions, with the purpose of incarcerating him for life, or until a change of conviction, as a means of preventing the "danger" which his opinions are supposed to threaten. Thus the denial of an unlimited liberty of speech and press leads us by unavoidable logic back to a total denial of both liberty and secrecy of conscience.

Since these speculative and hypothetically "dangerous" opinions are to have their dangerousness determined wholly by *a priori* methods, no limitation by way of general rule can possibly be put upon the whim, caprice, or superstitious fears of the mob. It follows that if we are to justify any suppression whatever, of the expression of any opinion whatever, we by necessary inference admit the existence of a rightful authority for every inquisition, and the punishment of every unpopular opinion, though silently and harmlessly entertained. There is no line which can be drawn between admitting the jurisdiction of the State to incarcerate any man for any opinion whatever, even those secretly entertained, and the liberty of conscience, speech and press unrestricted even in the very slightest degree. The initial act of tyranny by which we now justify our present abridgements of the liberty of speech and press, thus furnishes the precedent and justification for a total denial of the liberty of conscience.

If we would preserve any semblance of liberty of opinion, it must be liberty for the entertainment and expression of any opinion whatever. Let us then put ourselves firmly on the side of those who would never punish any opinion, until it had resulted in an overt act of invasion, and then punish the holder of the "dangerous" opinion only for his real participation in that act, as a proven accessory, and not otherwise.

This then brings us back to that firm foundation of liberty which was expressed by Holt in his "Law of Libel" (p. 72, 1816) in these words: "Private immorality or vice without

“public example [of invasion], and terminating in the individual, is left to a more solemn reckoning.”

The same thought is found in Herbert Spencer's definition of liberty, expressed by him in these words: “Every man “has freedom to do all that he wills, provided he infringes not “the equal freedom of any other man.” No opinion, even though it advocates such infringement of another's equal freedom, can by the mere verbal expression of it constitute such infringement. It follows that, no matter how slight, every abridgement of the liberty of conscience, speech or press is itself an unpardonable tyranny and necessarily implies a justification for every form of inquisition, and for every form of lawless absolutism, in the constituted tyrannical power.

The methods and evil consequences of the intellectual activity of all superstitious or bigoted persons are the same. Instead of leading others to an acceptance of their conclusions by encouraging an examination of all possible pertinent evidence, they inculcate their convictions by dogmatic reiteration and a cultivation of associated emotions of approval. Thus, they instill in the minds of the weak and immature, a forceful habit of unfairness, of imbecility, and of mental corruption, which unfits all affected ones for honest inquiry or the love of truth, or a desire to weigh opposing evidence. The bigot always attempts to frighten others from honestly or thoroughly investigating his convictions, by denouncing disagreement as dangerous, wickedly heretical, and therefore “immoral.” By such superstitious, ethical sentimentalizing, the benighted, in the name of the social good, deny others the right or the means of examining their boasted “morality.”

The small mind is incapable of seeing the distinction between indifference to the truth of one's opinions and indifference as to which of conflicting opinions shall prove to be true. The former is the attitude of the bigot and persecutor, otherwise he could not justify the limitation of discussion, and the suppression of evidence. The latter proposition presents the temper of the scientists, who therefore desire to consider all the material evidence adducible.

The man of rational mind considers all evidence, for the love of truth, but never loves any statement of alleged truth before it is fairly demonstrated to be true, and even then, he accepts it as only a conditional truth, for the correction of which all new evidence will ever be welcomed.

Purists of literature confound the attributes of belief with those of the behavior toward evidence. They ascribe to mere belief the praise or blame which can only be due to one's mode of dealing with evidence. Thus they make a virtue of unfairness, by forcibly suppressing a part, or punishing an honest weighing of all the evidence. They bribe men's intellect to the suicide of logic, by withholding praise or reward from the only mental activity which merits praise or blame, viz., the presence or absence of a full and impartial inquiry by every individual for himself. Since instilling opinions into others, without evidence, engenders an habitual neglect of evidence, the dogmatist of morals is the only man who can be guilty of intellectual immorality because he nurtures the essence of all depravity.

"The habit of forming opinions and acting upon them "without evidence, is one of the most immoral habits of mind. "As our opinions are the fathers of our actions, to be indifferent about the evidence of our opinions is to be indifferent about the consequences of our actions. But the consequences of our actions are the good and evil of our fellow creatures. "The habit of neglect of evidence, therefore, is the habit of "disregarding the good or evil of our fellow creatures." This is the foundation of all evil, and it follows that the moral censors of literature being without this virtue, it must be a rare accident if, from a more enlightened view, and in long perspective they be not judged deep in vice.

It is the disregard for and misuse of evidence by the masses which explains the existence of all pernicious institutions, and the mischievous opinions which support them and furnish their hateful durability.

If there can be any intellectual crime, it must consist of the voluntary neglect of evidence within reasonable access, and the highest degree of this criminality must attach to those who deliberately suppress this evidence which otherwise might be accessible to others prepared to make a right use of it. No man can be held responsible, nor should he be punished, for the effect which may be produced on his understanding by the partial evidence to which alone he had access. From this it follows that errors of the understanding must be corrected by an appeal to the understanding. Fines and imprisonment are bad forms of syllogism, which may suppress truth but can never elicit it.

“The public interest requires that every difficult question [even questions of the hygiene, the psychology and the ethics of sex] should be patiently and deliberately examined on all sides, under every view in which it presents itself; that no light should be excluded, but evidence and argument of every kind should have their full hearing. It is thus that the doubtful truths of one generation become the axioms of the next; and that the painful results of laborious investigation and deep thinking gradually descend from the closet of the learned and pervade the mass of the community, for the common improvement of mankind.”

It must be axiomatic that upon every question of importance to any human being it is the right of each individual to have the most intelligent opinion of which his capacity for understanding will permit. That being true, it is his inalienable right to have access to all the arguments and evidences which any other human would be willing to supply, if permitted to do so. The denial of this right, through the moral censorship of literature for sane adults, is an infamous tyranny.

“All benefit of having evidence is lost if it comes into a mind prepared to make bad use of it. The habit of attaching one’s self to one side of a question is a habit of confirmed selfishness, of low order, and immoral. By the habit of believing whatever a man [under perverse associations of his emotions of approval] wishes to believe, he becomes in proportion to the strength of the habit, a bad neighbor, a bad trustee, a bad politician, a bad judge, a shameless advocate. A man whose intellect is always at the command of his sinister interests, is a man whose conscience is always at the command of it.”

It irresistibly follows from these considerations that the only intellectual “immorality” which any man can commit, is that committed by those who systematically procure the suppression of evidence, and in this regard, no exception can be made because the subject matter of the suppression is sexual. I therefore charge that the most “immoral” persons on earth are those responsible for the suppression of miscalled “impure literature.” If error and knowledge are incompatible, then error and ignorance must be inseparable and the censors of literature must be the chief perpetuators of mental and moral stagnation.

“It is a truth that men ought no longer to be led, and it

“would be a joyful truth, if truth it were, that they are re-solved no longer to be led blindfold in ignorance. It is a truth that the principle which leads men to judge and treat each other, not according to the intrinsic merit of their action, but according to the accidental and involuntary coincidence of their opinions, is a vile principle. It is a truth that man should not render account to man for his beliefs,”—even on the subject of sex.

All those who love liberty more than power, and have the intelligence to see in the present and future, the development of tyranny by our rapid growth of arbitrary power as manifested in our growing censorship of the mails and press; the spread and development of “constructive contempt” of court; the progress of executive legislation at Washington; the assertion through government by injunction that the justice of employers, or our economic system, is to be criticized only at the times and places, and to the persons who have the court’s permission; the laws creating a censorship over the opinions of all immigrants, and prohibiting the advocacy within some of our states, of violent resistance of tyranny abroad; the punishment of a Philippine editor for publishing our Declaration of Independence as conducing to insurrection; the suppression of an American paper in Porto Rico for criticising public officials and denying the rightful opportunity to prove the truth of its allegation; the official destruction by the New York postal officials of several hundred thousand post-cards, which reflected on a candidate for public office; the demand of the beef packers that magazines criticising their business be denied the use of the mails; the arrest in Idaho of an editor for publishing questions asking a petty militia despot where under the Constitution he found the warrant for his acts during a strike-disorder; all these developments of recent years show in our country a condition, which, with many other circumstances, tends to the downfall of our liberties. Unless these tendencies are checked, and checked effectively, the time may come when the descendants of those who now will not defend the liberties of others, may have to defend their own under the added difficulty of multiple precedents.

The best way to prevent this is to re-establish, as the foundation of all liberties, all that freedom of speech and press,



which is now in various ways abridged upon a half dozen subjects, and soon may be abridged upon still other subjects.

It is hoped that all lovers of liberty will therefore unite to the end that an uncensored speech and press may be re-established and protected, for which end the Free Speech League is organized. It is for you to help its work along, either by co-operation with it or working independently toward the same end.

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